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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~399.~~ 127

JAMES T. SARGENT AND JOHN M. GORHAM, ADMINISTRATORS OF THE ESTATE OF JOHN H. GORHAM, DECEASED, APPELLANTS,

vs.

EDWIN K. BURGESS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 15, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 399.

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1 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

JAMES T. SARGENT and JOHN M. GORHAM, Administrator of the Estate of John M. Gorham, Deceased, Copartners Doing Business as Gorham and Sargent,

vs.

EDWIN K. BURGESS.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania*, } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1883, No. 24.

2 It is thus contained:

Be it remembered that on the 25th day of April, A. D. 1883, James T. Sargent and John M. Gorham, administrator of the estate of John M. Gorham, deceased, copartners doing business as Gorham and Sargent, by their solicitor, George H. Christy, Esq., come into court here and file their bill of complaint against Edwin K. Burgess in the words following, to wit:

3 *Complainants' Bill.*

Circuit Court of the United States, in and for the Eastern District of Pennsylvania. No. 24 of April Session, 1883. In Equity.

JAMES T. SARGENT and JOHN M. GORHAM, Administrators of the Estate of John H. Gorham, Deceased, Copartners Doing Business as Gorham & Sargent,

vs.

EDWIN K. BURGESS.

To the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania:

James Sargent and John M. Gorham, administrators of the estate of John H. Gorham, deceased, residing at Cleveland, in the county of Cuyahoga, State of Ohio, and citizens of said State, copartners doing business as Gorham & Sargent, at Cleveland aforesaid, bring this bill against Edwin K. Burgess, of Philadelphia, Pennsylvania, a citizen of said State and resident within the eastern district thereof.

And thereupon your orators complain and say that John M. Gorham, one of your orators, was and is the true, original, and first inventor of a certain new and useful improvement in wash-boards, not known or used before his invention thereof, and not, for more than two years prior to the date of his application for a patent thereof, in public use or on sale.

And your orators further show unto your honors that the said John M. Gorham, so being the inventor of said improvement, and

being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing laws of Congress, and having duly complied in all respects with the conditions and requisitions of said laws, on the sixth day of January, 1880, letters patent of the United States, No. 223,338, signed, sealed, and executed in due form of law, for his invention were issued and delivered to the aforesaid John M. Gorham, whereby there was secured to him and his heirs, legal representatives, and assigns, for the term of ——teen years from the sixth day of January, 1880, the full and exclusive right of making, using, and vending to others to be used the said improvement.

4 And your orators further show that a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent annexed, accompanied by certain drawings referred to in said last-mentioned schedule and forming part of said letters patent. The said letters patent and the said specification thereto annexed (which, or an exemplified copy of which, your orators will produce as your honors may direct) were duly recorded in the Patent Office.

And your orators further show unto your honors that by virtue of certain instruments in writing, duly recorded in the U. S. Patent Office, or to be recorded, the copartnership firm of Gorham & Sargent, composed of John H. Gorham (now deceased) and James T. Sargent, one of your orators, became the owners of the exclusive right and license in and under said letters patent No. 223,338, such right and license to be held and enjoyed by said firm during its existence, but not to exceed the period of five years from August 24th, 1881.

That thereafter, to wit, on or about the 17th day of December, 1881, the said John H. Gorham died, and upon due proceedings had in and by the probate court in and for the county of Cuyahoga, State of Ohio, John M. Gorham, one of your orators, was appointed and constituted administrator of the estate of said John H. Gorham.

That subsequent to the death of the said John H. Gorham the said James T. Sargent, one of your orators, and the estate of the said John H. Gorham, by its administrator, John M. Gorham, one of your orators, entered into and continued the said copartnership of Gorham & Sargent, and as such, by virtue of certain instruments in writing, duly recorded, became and still are the owners of the exclusive right and license under said letters patent No. 223,338, as by said instruments in writing or duly authenticated copies thereof, and such other proofs as your honors may direct, will fully appear.

And your orators further show that they have been at large expenditure of time, money, and labor in making the said patented improvement profitable to themselves and useful to the public, and have extensively applied the several improvements to practical use, and have been and, but for the infringement hereinafter complained of, your orators would still be in the undisturbed possession, use,

and enjoyment of the exclusive privileges secured by the said letters patent and in the receipt of the profits of the same.

And your orators further show unto your honors, as they are informed and believe, that the said defendant herein named, well knowing all the facts hereinbefore set forth, is now constructing, selling, and using wash-boards in some or all parts thereof substantially the same in construction and operation as in the said letters patent mentioned, the exclusive right and privilege to make and use which and vend the same to others to be used is thus by law vested in your orators.

And so it is, may it please your honors, that the said defendant, as your orators are informed and believe, without the license of your orators, against their will, and in violation of their rights, has sold and used and intends to continue still to sell and use the said improvements within the eastern district of Pennsylvania and elsewhere in the United States, and refuses to pay to your orators any of the profits which he has made by such unlawful manufacture and use or to desist from further infringement of said recited letters patent; all of which acts and doings are in violation of the exclusive rights and privileges so as aforesaid vested in your orators under and by virtue of said recited letters patent and assignments and are contrary to equity and good conscience and tend to the manifest injury of your orators in the premises.

To the end, therefore, that the defendant may, if he can, show reason why your orators should not have the relief hereby prayed, and that he make a full disclosure and discovery of all the matters aforesaid, and upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are required to answer—that is to say:

1. Whether the said original letters patent No. 223,338 hereinbefore mentioned was granted and issued to John M. Gorham and assigned as aforesaid.

2. Whether the said defendant has at any time, and when, and during what period of time, made, used, or sold any, and how many, wash-boards constructed in whole or in part upon the principles and in the manner described in said letters patent No. 223,338 granted to John M. Gorham as aforesaid.

Describe minutely and in detail their construction and operation.

And that the said defendant may answer the premises, and that he may be decreed to account for and pay over the income or profits thus unlawfully derived or which might have been derived from the violation of the rights of your orators as aforesaid. Your orators pray that your honors, upon entering of the decree in favor of your orators against said defendant for infringement, as above prayed for, may also proceed to assess, or cause to be assessed, under your directions, as well the profits or income to be derived therefrom, to be accounted for as aforesaid, as also, in addition thereto, the damages sustained by your orators by reason of such infringement, and that

being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing laws of Congress, and having duly complied in all respects with the conditions and requisitions of said laws, on the sixth day of January, 1880, letters patent of the United States, No. 223,338, signed, sealed, and executed in due form of law, for his invention were issued and delivered to the aforesaid John M. Gorham, whereby there was secured to him and his heirs, legal representatives, and assigns, for the term of ——teen years from the sixth day of January, 1880, the full and exclusive right of making, using, and vending to others to be used the said improvement.

4 And your orators further show that a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent annexed, accompanied by certain drawings referred to in said last-mentioned schedule and forming part of said letters patent. The said letters patent and the said specification thereto annexed (which, or an exemplified copy of which, your orators will produce as your honors may direct) were duly recorded in the Patent Office.

And your orators further show unto your honors that by virtue of certain instruments in writing, duly recorded in the U. S. Patent Office, or to be recorded, the copartnership firm of Gorham & Sargent, composed of John H. Gorham (now deceased) and James T. Sargent, one of your orators, became the owners of the exclusive right and license in and under said letters patent No. 223,338, such right and license to be held and enjoyed by said firm during its existence, but not to exceed the period of five years from August 24th, 1881.

That thereafter, to wit, on or about the 17th day of December, 1881, the said John H. Gorham died, and upon due proceedings had in and by the probate court in and for the county of Cuyahoga, State of Ohio, John M. Gorham, one of your orators, was appointed and constituted administrator of the estate of said John H. Gorham.

That subsequent to the death of the said John H. Gorham the said James T. Sargent, one of your orators, and the estate of the said John H. Gorham, by its administrator, John M. Gorham, one of your orators, entered into and continued the said copartnership of Gorham & Sargent, and as such, by virtue of certain instruments in writing, duly recorded, became and still are the owners of the exclusive right and license under said letters patent No. 223,338, as by said instruments in writing or duly authenticated copies thereof, and such other proofs as your honors may direct, will fully appear.

And your orators further show that they have been at large expenditure of time, money, and labor in making the said patented improvement profitable to themselves and useful to the public, and have extensively applied the several improvements to practical use, and have been and, but for the infringement hereinafter complained of, your orators would still be in the undisturbed possession, use,

and enjoyment of the exclusive privileges secured by the said letters patent and in the receipt of the profits of the same.

And your orators further show unto your honors, as they are informed and believe, that the said defendant herein named, well knowing all the facts hereinbefore set forth, is now constructing, selling, and using wash-boards in some or all parts thereof substantially the same in construction and operation as in the said letters patent mentioned, the exclusive right and privilege to make and use which and vend the same to others to be used is thus by law vested in your orators.

And so it is, may it please your honors, that the said defendant, as your orators are informed and believe, without the license of your orators, against their will, and in violation of their rights, has sold and used and intends to continue still to sell and use the said improvements within the eastern district of Pennsylvania and elsewhere in the United States, and refuses to pay to your orators any of the profits which he has made by such unlawful manufacture and use or to desist from further infringement of said recited letters patent; all of which acts and doings are in violation of the exclusive rights and privileges so as aforesaid vested in your orators under and by virtue of said recited letters patent and assignments and are contrary to equity and good conscience and tend to the manifest injury of your orators in the premises.

To the end, therefore, that the defendant may, if he can, show reason why your orators should not have the relief hereby prayed, and that he make a full disclosure and discovery of all the matters aforesaid, and upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are required to answer—that is to say:

1. Whether the said original letters patent No. 223,338 hereinbefore mentioned was granted and issued to John M. Gorham and assigned as aforesaid.

2. Whether the said defendant has at any time, and when, and during what period of time, made, used, or sold any, and how many, wash-boards constructed in whole or in part upon the principles and in the manner described in said letters patent No. 223,338 granted to John M. Gorham as aforesaid.

Describe minutely and in detail their construction and operation.

And that the said defendant may answer the premises, and that he may be decreed to account for and pay over the income or profits thus unlawfully derived or which might have been derived from the violation of the rights of your orators as aforesaid. Your orators pray that your honors, upon entering of the decree in favor of your orators against said defendant for infringement, as above prayed for, may also proceed to assess, or cause to be assessed, under your directions, as well the profits or income to be derived therefrom, to be accounted for as aforesaid, as also, in addition thereto, the damages sustained by your orators by reason of such infringement, and that

your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the wilful and unjust infringement committed by said defendant, as hereinbefore set forth; and, further, that the said defendant may be restrained from any further violation of the rights of your orators as aforesaid. Your orators pray that your honors may grant a writ of injunction, issuing from and under the seal of this honorable court, or issued by one of your honors, perpetually enjoining or restraining the said defendant, his clerks, attorneys, servants, agents, and workmen, from any further construction or sale or use in any manner of said patented improvements or any part thereof, in violation of the rights of your orators as aforesaid. And your orators further pray that a provisional or preliminary injunction be issued, restraining the said defendant from any further infringement of said recited letters patent, pending this cause; and they pray for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orators not only a writ of injunction, conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said Edwin K. Burgess, commanding him, on a day certain therein to be named, to appear and answer unto this bill of complaint,
6 and to abide and perform such order and decree in the premises as to the court shall seem meet and may be required by the principles of equity and good conscience.

GEORGE H. CHRISTY,
Counsel and Solicitor for Complainants,
96 *Diamond Street, Pittsburgh, Pa.*

NOTE.—The defendant is required to answer each of the foregoing interrogatories numbered 1 to 2, inclusive.

GEORGE H. CHRISTY,
Solicitor for Complainants.

UNITED STATES OF AMERICA, }
Northern District of Ohio, } *ss:*

Before me, the subscriber, duly authorized to administer oaths, personally came James T. Sargent, one of the complainants in the foregoing bill named, who, being duly sworn, deposes and says that so far as the statements herein contained are within his own knowledge they are true, and so far as they are derived from the information of others he verily believes them to be true; and he further says that he verily believes the said John H. Gorham, in said bill named, to be the original, true, and first inventor of the new and useful improvement which is described in the letters patent granted to him and mentioned in the foregoing bill; and, further, that the said deponent verily believes that the title of the said complainant is as set forth in said bill.

JAMES T. SARGENT.

Sworn and subscribed before me this twenty-third day of April, A. D. 1883.

[SEAL.] H. CLARK FORD,
Notary Public in and for Cuyahoga County, Ohio.

Filed April 25, 1883.

Endorsed: No. 24. April sess. 1883. C. C. U. S., E. D. of Pa. Sargent *et al. vs.* Burgess. Bill of complaint. To clerk: Issue subpœna in equity to def't, returnable 1st Monday of June, 1883. Geo. H. Christy, sol'c't'r for compl'ts. Filed April 25, 1883.

7 And afterwards, to wit, on the 16th day of July, A. D. 1885, the respondent, by his attorney, James Parsons, Esq., comes into court here and files his answer in the following words, to wit:

Defendant's Answer.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. No. 24 of April Sessions, 1883. In Equity.

JAMES T. SARGENT and JOHN H. GORHAM, Administrator of the Estate of John M. Gorham, Deceased, Copartners Doing Business as Gorham & Sargent,

vs.

EDWIN K. BURGESS.

The answer of Edwin K. Burgess, defendant above named, to the bill of complaint of James T. Sargent and John H. Gorham, administrator of the estate of John M. Gorham, deceased, copartners doing business as Gorham & Sargent.

This defendant now and at all times saving and reserving unto himself all and all manner of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill contained, nevertheless for answer thereunto, or unto so many and such parts thereof as this defendant is advised are material or necessary for him to make answer unto, answering, saith as follows:

It may be true, for aught this defendant knows to the contrary thereof, that the said John M. Gorham in his lifetime claimed to be the true, original, and first inventor of the alleged new and useful improvement in wash-boards as in said bill mentioned, and that the same had not been known or used before his alleged invention thereof, and had not for more than two years prior to his application for letters patent therefor been in public use or on sale as in said bill alleged; but this defendant saith that he hath no knowledge or information as to said several and respective allegations in that behalf.

Furthermore, this defendant saith that he does not know and has not been informed, save in and by said bill, that the said John M. Gorham made application to the proper department of the Government of the United States for letters patent for said alleged improve-

ment, and that upon due compliance with the then existing laws of Congress in that behalf the letters patent in said bill mentioned were issued and delivered to him, the said John M. Gorham, for
8 said alleged invention numbered and dated as in said bill alleged, and signed, sealed, and executed in due form of law, as in said bill alleged; but the defendant prays that the said complainants may be compelled to make due and legal proof of all and singular their respective allegations in that behalf.

Furthermore, this defendant saith that he hath no knowledge or information, save as derived from said bill, of the right and title of the said complainants to bring or to maintain this their said bill in that behalf; and he is advised, and he accordingly submits to this honorable court, that the said complainants have not in and by their said bill set forth or described any right or title sufficient and adequate in law or equity to enable them to bring or to maintain this suit against the defendant, and the defendant craves the benefit and advantage of his said objection, at the final hearing or otherwise, with like effect as if he had now specially demurred to said bill of complaint for said reasons, and he prays that the said complainants may be compelled to make due and legal proof of the writings, acts, matters, and things alleged by them in this behalf as constituting or proving the exclusive right and license under said letters patent claimed by the said complainants in and by their said bill of complaint.

And the defendant further saith that he does not know and has not been informed, save in and by said bill, that the complainants have been at large expenditure of time, money, or labor in making the said alleged patented improvement profitable to themselves and useful to the public, and have extensively applied the said alleged improvements to practical use. On the contrary thereof, the defendant saith that if such expenditure of time, labor, and money took place, as in said bill alleged, it was occasioned by fruitless and unsuccessful attempts and efforts to make the said alleged improvement practical and efficient in itself and useful to the public; all of which attempts and efforts failed to accomplish the purpose and object intended thereby and failed to give to the said alleged improvement any utility which was recognized by the public as beneficial or as superior in any substantial or material respect to such as was derived from other or analogous devices which then were or subsequently became well known and in use.

Furthermore, the defendant denies that but for the alleged infringement by the defendant in said bill mentioned the said complainants would still be in the undisturbed possession, use, and enjoyment of the alleged exclusive privileges secured by said letters patent and in the receipt of the profits of the same. On the contrary, the defendant saith that he hath not in anywise interfered with or disturbed the alleged use, possession, and enjoyment by the said complainants, either by infringing the rights of the said complainants or by any other act, matter, or thing, and has not by any act, matter, or thing diminished the receipt of profits by the said complainants from the said alleged invention.

Defendant further saith that he is and has been for about five years last past engaged, in the city of Philadelphia, in the wooden and willow ware business, which includes the buying and selling, among other things of divers forms, such household articles as wash-boards and other articles of the same general sort that are bought and sold in open market by persons manufacturing or buying or selling the
9 same or dealing therewith. During the time above mentioned the defendant has from time to time bought from the said John M. Gorham and his agents, in his lifetime, and, since his death, from the complainants, a number of wash-boards manufactured by the said Gorham and by his successors in business, and has from time to time paid the said Gorham and his successors in business therefor, and has received from him or them a commission or percentage on such sales thus effected by defendant for said manufacturers, such transactions being all made and had directly with the said patentee or with his successors in business or title, or with his or their duly authorized agent or representatives, and continuing until a comparatively recent period, when the so-called Gorham wash-board was to a great extent superseded and displaced from the market by the wash-board manufactured and sold under certain letters patent issued to one Charles H. Williams, as hereinafter mentioned; and the defendant saith that he is advised, and he accordingly submits to this honorable court, that such purchases and sales thus made by him as aforesaid, being transactions by and with the said patentee and his successors and representatives, do not in any way constitute an infringement or violation by him of the said letters patent of the said John M. Gorham and cannot in law or equity be complained of as such; and the defendant denies it to be true, as in said bill alleged, that he, the defendant, is now or that he hath at any time been, otherwise than as above mentioned and set forth, constructing, selling, or using wash-boards in some or all parts thereof substantially the same in construction and operation as in the said letters patent mentioned. On the contrary thereof, the defendant alleges that the wash-boards sold by him, and which he is informed and believes are meant and intended to be claimed in this proceeding and under this bill to be infringements of the alleged rights of the said complainants, differ in all substantial and material respects, both in mechanical construction and in principle, purpose, operation, and effect, from the wash-boards described in the letters patent in said bill mentioned, and are not similar thereto and do not resemble the same and are not an infringement or violation thereof, but are made and constructed upon a different plan and principle, by a different arrangement of parts and devices, and for the accomplishment of a different purpose.

For further answer to said bill of complaint this defendant saith that the wash-boards sold by him, which he is informed and believes are intended and meant in this proceeding to be claimed as infringements of the alleged rights of the complainants, have been manufactured, made, and constructed under and by virtue of certain letters patent of the United States granted to one Charles H. Williams for certain new and useful improvements in wash-boards, bearing date

March 28, 1882, and numbered 255,555, of which said improvements this defendant is informed and he believes that he, the said Charles H. Williams, the said patentee, was the true, original, and first inventor; and defendant further saith that said last-mentioned letters patent were duly applied for by the said Charles H. Williams, and that the same were duly issued to him in conformity with the acts of Congress in that behalf, and that the same have since been and are now in full validity, force, operation, and effect, and that the improvement described therein is legally, patentably, and mechanically different and distinct from the alleged improvement described in the letters patent in said bill mentioned and is not, in the judgment of the Commissioner of Patents, or in fact or in law, a violation or infringement thereof.

And the defendant further saith that he is informed, and that he believes and he so charges, that the said John M. Gorham was not the true, original, and first inventor of the alleged improvement described in the specification attached to the letters patent in said bill mentioned, but that on the contrary the same had, prior to his alleged invention thereof, been mentioned and described in various letters patent and printed publications, and had been used by divers persons, the full particulars and details of which the defendant craves leave hereafter to add hereto, by way of supplement or addition hereto, when he shall have been more minutely and specifically informed as to the same, with like effect as if the same were now here set forth. Defendant further saith that the alleged improvement mentioned in said bill of complaint is, among other letters patent of the United States, described and set forth in certain letters patent of the United States, issued to John Epeneter and Bernhard Grahl, dated May 28, 1872, numbered 127,325, and reissued to said patentees by reissued letters patent, dated January 6, 1880, numbered 9022, and that the said alleged improvement in said bill mentioned was, prior to the alleged invention thereof by the said John M. Gorham, known to and publicly used by divers persons, and, among others, by John Epeneter and by Bernhard Grahl, now or late residing at Council Bluffs, in the State of Iowa, who used the same at said Council Bluffs and elsewhere.

And the defendant further saith that the specification or description attached to the letters patent of the said John M. Gorham in said bill mentioned and forming part thereof does not set forth, describe, or claim any legal or patentable invention, novelty, or utility, or any device which, in view of the prior state of the art, is, in law or in fact, legally patentable, or which constitutes legal or patentable invention, or which possesses legal or patentable novelty or utility, and that the said letters patent are for these reasons, among others, null and void.

Furthermore, for answer to said bill, the defendant saith, as to the first interrogatory thereof, that he hath no knowledge of the matters inquired of therein, and is not informed thereof, save as in and by said bill he is informed, and as to the second interrogatory the defendant saith that he hath not at any time made, used, or sold, otherwise than with the authority or privity of the said John M. Gor-

ham, his successors, or agents, as above mentioned, any wash-boards, constructed, in whole or in part, upon the principles and in the manner described in said letters patent No. 223,338 granted to the said John M. Gorham, and that the construction and operation of the wash-boards sold by the defendant, which, as he is informed and as he believes, are claimed by the said complainants to be an infringement of their alleged rights, will appear in the letters patent above mentioned of the said Charles H. Williams, and in the specification and drawings attached thereto and making a part thereof.

The defendant also denies that the said complainants have in and by their said bill shown any legal or equitable right or title to the decree, injunction, restraint, or other relief, process, or judgment against this defendant therein and thereby prayed for, without this, that there is any other cause, matter, or thing in said com-
11 plainants' said bill contained material or necessary to be answered unto, which this defendant has not herein and hereby fully answered, confessed, or denied to be true; wherefore the defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most unjustly incurred. And he will ever pray, etc.

EDWIN K. BURGESS.

JAMES PARSONS,
Of Counsel with Defendant.

Edwin K. Burgess, within named, being duly affirmed, says that the facts and statements set forth in the foregoing answer, so far as the same are within his own knowledge, are true, and so far
12 as derived from the information of others he believes them to be true.

EDWIN K. BURGESS.

Affirmed and subscribed before me this sixteenth day of July, A. D. 1883.

A. VAN HELDEN,
Notary Public.

Endorsed: No. 24. April sessions, 1883. In the circuit court of the United States in and for the eastern district of Penna. In equity. James T. Sargent and John H. Gorham, administrator of the estate of John M. Gorham, deceased, copartners doing business as Gorham & Sargent, *vs.* Edwin K. Burgess. Answer of Edwin K. Burgess. James Parsons, of counsel with d'f't. Filed July 16, 1883.

And afterwards, to wit, on the 25th day of July, A. D. 1885, the complainants, by their attorney, comes into court here and
13 files their replication in the following words, to wit:

United States Circuit Court, Eastern District of Pennsylvania.
April Sessions, 1883. In Equity.

JAMES T. SARGENT and JOHN H. GORHAM, Adm'r,
vs.
EDWIN K. BURGESS. } No. 24.

The replication of James T. Sargent and John H. Gorham, complainants, to the answer of Edwin K. Burgess, defendant.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said
14 defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

Pittsburgh, J'y 23, '83.

GEORGE H. CHRISTY,
Solicitor for Complainants.

Endorsed: No. 24. April sess., 1883. C. C. U. S., E. D. of Pa. Sargent *et al. vs.* Burgess. Replication. Filed July 25, 1883.

15 *Complainants' Testimony.*

United States Circuit Court, Eastern District of Pennsylvania.
April Sess., 1883. In Equity.

JAMES T. SARGENT and JOHN H. GORHAM, Administrators, &c.,
vs.
EDWIN K. BURGESS. } No. 24.

Testimony on behalf of complainants, taken pursuant to notice, before Samuel Bell, U. S. commissioner and special examiner, at his office, room No. 10, third floor, U. S. court-house, Philadelphia, on the 16th day of September, A. D. 1884, at 10½ o'clock a. m., and on subsequent days, by adjournment.

Present: J. Snowden Bell, Esq., for complainant; Edwin K. Burgess, defendant in person.

JAMES T. FENLIN, a witness produced on behalf of complainants, being duly sworn according to law, deposes and says:

16 Q. 1. Please state your name, residence, and occupation.
A. James T. Fenlin; manager for George Chipman; 119 Market street; wood and willow ware.

Q. 2. Are you acquainted with Mr. Edwin K. Burgess, defendant in this cause, who is now present?

A. Yes, sir.

Q. 3. Please state whether or not Mr. Burgess has ever sold or offered for sale to you any wash-boards provided with what are known as protectors; and, if yea, when and where was such sale or offer made?

A. Mr. Burgess offered me the protector board in the early part of April, 1883. He provided me with a sample, and on April 10th, 1883, I purchased one dozen. On April 14th I purchased five dozen. On or about July 1st I placed an order with Mr. Burgess for twenty-five dozen, which were shipped from the factory.

Q. 4. Were these several purchases made upon the solicitation of Mr. Burgess, in the usual course of business?

A. Yes, sir.

Q. 5. Please examine the wash-board now shown you and state how far, if at all, the same corresponds in the construction and mode of operation of its protector with the wash-boards which you have stated you purchased from Mr. Burgess.

A. To the best of my knowledge, the protector is identical to those purchased from Mr. Burgess by me.

Q. 6. Have you compared said protector wash-board with the wash-boards purchased by you; and, if so, when?

A. I compared it on September the 15th of this year with the protector purchased from Mr. Burgess and found no difference between them.

Wash-board referred to is offered in evidence and marked by the examiner Complainants' Exhibit "Wash-Board."

JAMES T. FENLIN,

Sworn and subscribed before me this 16th day of September, 1884.

SAMUEL BELL,
U. S. Com., Special Examiner.

EDWIN K. BURGESS, a witness produced on behalf of complainants, being duly affirmed according to law, deposes and says:

Q. 7. Please state your name, residence, and occupation.

A. Edwin K. Burgess; manufacturers' agent, wood and willow ware; 346 North Front street, Philadelphia. I am the defendant in this case.

Q. 8. Are you or are you not engaged in the sale of wash-boards as a part of your business, at the above address; and, if yea, for how long have you been so engaged?

A. Yes, sir; I have been engaged in the sale of wash-boards as part of my business, in this city, for about ten years last past, and for the two years last past at the address which I have above stated.

17 Q. 9. Please examine the wash-board now shown you and marked Complainants' Exhibit "Wash-Board" and state

whether or not you have, in the course of your business in this city, sold or offered for sale wash-boards having protectors similar in construction and mode of operation to the protector of Complainants' Exhibit "Wash-Board."

A. I have, I think, for about a year and a half last past.

Q. 10. Have you at any time made sales in the city of Philadelphia of wash-boards having protectors similar to that of Complainants' Exhibit "Wash-Board" to Mr. James T. Fenlin, manager for George Chipman, No. 119 Market street; and, if so, when?

A. I have, upon several occasions, but I could not give the dates of sale without reference to my books.

Q. 11. Have you or not made sales of similar wash-boards to any other persons in the city of Philadelphia and elsewhere?

A. I have, in the city of Philadelphia. Witness adds: I have refreshed my recollection by examination of a bill made by me to George Chipman, 119 Market street, Philadelphia, for whom Mr. James T. Fenlin is manager, and find that I sold a wash-board having a protector similar in construction and mode of operation to the protector of Complainants' Exhibit "Wash-Board" to said George Chipman, at his address as above stated, on or before said date, to wit, April 10th, 1883.

EDWIN K. BURGESS.

Affirmed and subscribed to before me this 16th day of September, A. D. 1884.

SAMUEL BELL,
U. S. Com., Special Examiner.

Adjourned to Wednesday, Sept. 17th, at 11.30 a. m.

WEDNESDAY, *September* 17, 1884.

Met pursuant to adjournment.

Present: J. Snowden Bell, for complainants.

HENRY L. BREVOORT, a witness produced on behalf of complainants, being duly sworn according to law, deposes and says, in answer to interrogatories propounded to him by J. SNOWDEN BELL, Esq., of counsel for complainants, as follows, to wit:

Q. 12. State your name, residence, and occupation.

A. My name is Henry L. Brevoort; I am thirty-five years of age; I live in the city of Brooklyn, and am by occupation an engineer. When I was a boy I entered a machine shop, and, after a number of years of work therein, acquired a knowledge of mechanics and mechanical operations. Since this time I have been frequently engaged in designing, constructing, and testing machinery of various kinds. For the last ten or twelve years I have been almost exclusively employed in examining patents and patented devices, and I have very frequently each year been called upon to testify in suits relating to patents and patented devices. I have been engaged in upwards of three hundred suits, and in the course of this work I have become very familiar with and have, of course, been many

times called upon to compare the descriptions of patents with machines of various kinds.

18 Q. 13. Have you read, and do you understand, letters patent of the United States No. 223,338, granted to John M. Gorham, for improvement in wash-boards, dated January 6th, 1880?

A. I have frequently read the patent enquired about in the question, and I think that I understand that which is there shown and described.

Counsel for complainants offers and puts in evidence certified copy of the patent referred to in interrogatory 13, which is marked by the examiner Complainants' Exhibit "Gorham Patent."

Q. 14. Please examine Complainants' Exhibit "Wash-Board" and state whether or not you find therein the invention set forth in the Gorham patent, No. 223,338, giving your reasons for such opinion as you may express.

A. I have carefully examined the wash-board referred to in the question and I understand the structure and its method of use. It is my opinion that this wash-board contains the invention specified in the third claim of the complainants' patent. My reasons for this opinion are as follows, and in giving them I will first state what I understand to be the invention specified in the third claim of the Gorham patent:

The Gorham patent is for a wash-board—that is to say, a device having a surface suitably formed so that a washer-woman in washing cloths can rub the cloths upon such surface, and in this way and by the use of soap and water remove the dirt. In performing this operation the lower end of the legs of the wash-board rests upon the bottom of the tub and the top of the wash-board usually projects above the tub, and over this top the washer-woman bends as she manipulates the clothes in the water. It is advantageous, and I believe it is not new, to provide a guard or protector at the top of the wash-board so that the clothes of the washer-woman will be more or less protected from the soap-suds which, in the act of washing, she may scatter upwards. The Gorham patent describes, and the principal feature of novelty there referred to is, a protector arranged with a spring so that when the wash-board is in use a spring will always keep the protector out or at right angles to the wash-board, while, at the same time, such spring-held protector will possess the capacity of yielding when it is pressed upon from above by the person using the board. This invention is claimed in the Gorham patent in the first and second claims thereof, but as these claims are not here in controversy it is useless to dwell upon them.

The Gorham patent, however, describes another invention, which is one that may or may not be used with the spring previously mentioned. The invention to which I refer is the location of the protector in relation to the wash-board. In the Gorham patent the protector is attached between the side pieces of the frame and the crown or top piece of the wash-board, and the structure of the board itself is such that this protector, when not in use or when the board is packed for shipment, may be folded down into the proper space

left for it between the crown piece and the side frames and the rubbing surface. It is clear that with a protector so located and with a wash-board constructed so that this location of the protector may be taken advantage of, that the spring may or may not be utilized, and that even without the spring a clearly defined invention would be had, and one which I should think would be useful and give to the wash-board value over and above a board in which the entire or substantially the entire bulk of the protector projected outward from the board at all times.

19 The third claim of the Gorham patent describes, as I understand, the invention above referred to and is for a combination of parts, to wit, a wash-board and a protector attached thereto, the protector being so located and constructed in reference to the wash-board that it can fold down into said wash-board even with or below the general frame of the plane, the protector necessarily being located below the crown piece and between the side frames of the wash-board. The defendants' wash-board, which is marked Complainants' Exhibit "Wash-Board," is in all substantial respects a wash-board like the wash-board shown in the Gorham patent. It also has a protector. This protector is hinged between the side frames of the wash-board and below the crown piece thereof, and it is so constructed that when the protector is in use it projects from the wash-board, in proximity to the crown piece, thus forming an efficient protector for the washer-woman's clothing, while, when the protector is not in use, it can be folded down between the side pieces and below the crown piece of the wash-board. It is true that certain differences exist between the defendant's wash-board and the wash-board of the Gorham patent. In the defendant's wash-board the protector is not held out by a spring and is not yielding to the pressure of the washer-woman's body, but, on the other hand, the protector has to be placed by the hand of the user in the distended position, and when so placed it is unyielding. It is also true that the protector of the defendant's wash-board when folded into the cavity formed for it is not entirely even with or below the general plane of the wash-board frame, but all substantial portions of it are below the wash-board frame, and that portion of the protector which projects above the frame is so small in amount as to be practically immaterial, either when considered as an addition to the bulk of the board or as presenting a surface against which something may strike, and thus injure the protector. These are the only differences I find between the defendant's wash-board and the invention specified in the third claim of the patent, and I am of the opinion that the defendant's wash-board contains the combination recited in the said third claim—that is to say, it is a wash-board combined with a protector, which is located below the crown piece and between the side pieces of the wash-board frame, and the protector and the wash-board are so constructed that the said protector can be folded down into or upon the said wash-board, and when so folded will be substantially even with the general plane of the said wash-board frame. Now, this is the invention of the third claim of the Gorham patent, and

this invention is, in substance, embodied in the defendant's wash-board, marked Complainants' Exhibit "Wash-Board."

Q. 15. Do you find in the specification of the Gorham patent any statement or description of the feature of utility due to the employment in the wash-board of the combination set forth in the third claim of said patent?

A. I do. I quote from the specification a paragraph which contains the matter to which I refer. I refer to the matter contained between lines 95, column 2, page 1, and line 3, column 1, page 2, which is as follows: "Another peculiar feature of my wash-board is the flat manner in which it can be packed, as shown in Fig. 1 of the drawings. This is a great convenience and advantage in packing for shipment, and, moreover, when thus packed the protector is itself protected from injury to which it would otherwise be exposed. This is accomplished by locating the protector, as shown in Figs. 1, 2, and 3 of the drawings, below the crown piece and between the side pieces of the frame."

HENRY L. BREVOORT.

Sworn and subscribed to before me this 17th day of September, A. D. 1884.

SAMUEL BELL,
U. S. Com., Special Examiner.

Counsel for complainants offers and puts in evidence certified copy of all instruments of writing found of record under letters patent 223,338, which is marked by the examiner Complainants' Exhibit "Assignments."

Thereupon complainants rest, and the examination is adjourned *sine die*.

SAMUEL BELL,
U. S. Com., Sp'l Examiner.

TUESDAY, *November 25th*, 1884.

Met, pursuant to notice, at the office of James Parsons, Esq., No. 1430 South Penn Square, Philadelphia.

Present: J. Snowden Bell, Esq., for complainants; James Parsons, Esq., for respondent; and Henry L. Brevoort, witness for complainants, produced for cross-examination.

Mr. Parsons stating that he waives a cross-examination, the complainants close their testimony-in-chief.

SAMUEL BELL,
Special Examiner.

21 *Complainants' Testimony in Rebuttal.*

United States Circuit Court, Eastern District of Pennsylvania. April Sess., 1883. In Equity.

JAMES T. SARGENT and JOHN H. GORHAM, Administrators, &c., *vs.* EDWIN K. BURGESS. } No. 24.

Testimony on behalf of complainants, in rebuttal, taken by agreement of counsel without formal notice, before Samuel Bell, U. S. commissioner and special examiner, at the office of James Parsons, Esq., No. 1430 South Penn Square, Philadelphia, commencing on Monday, March 23d, 1885, at two o'clock p. m., and continuing by adjournment as hereinafter noted.

Present: J. Snowden Bell, Esq., of counsel for complainants; James Parsons, Esq., counsel for defendant.

HENRY L. BREVOORT, a witness produced on behalf of complainants, being duly sworn according to law, deposes and says in answer to interrogatories propounded by J. SNOWDEN BELL, Esq, of counsel for complainants, as follows, to wit:

Q. 103. Are you the same Henry L. Brevoort who has heretofore testified in this cause?

A. I am.

Q. 104. Have you read the testimony of E. B. Stocking, a witness on behalf of defendant in this cause?

A. I have.

Q. 105. Do you understand the defects in Figs. 1 and 2 of the Gordon patent, No. 223,338, pointed out by Mr. Stocking in his deposition, and how far, in your opinion, are such defects correctly stated?

A. I do understand the defects which are pointed by Mr. Stocking, which are the defects he finds in Figs. 1 and 2 of the patent enquired about.

The defects found by Mr. Stocking are in substance as follows: In Fig. 1 the protector C, shown in full lines, is not drawn correctly; it should be so drawn that at its upper end it should overlie the rod carrying the springs. Undoubtedly this defect pointed out in the drawing is correctly stated by Mr. Stocking.

In Fig. 2 there should be some play left between the left-hand end of the protector, as shown in full lines, and the surrounding parts, including more play between the spring C′ and the rod; also the protector in said figure, as shown in dotted lines, should
22 occupy the position which the protector, shown in full lines in Fig. 1, should occupy. These defects are correctly stated. It is incorrect and inconsistent to say that the rod that is within the coil springs C′ C′ is a pivot upon which the protector turns; this rod merely holds the coil springs, and the protector is held by one

arm of each of the coiled springs, and is to have such movement as these ends of the springs admit of.

Q. 106. Mr. Stocking states in his answer to question 4 that he observes within the plane of the part C two dotted circles which he understands to represent a pivot. Is such understanding, in your opinion, a correct one? And, if so, please indicate what, if any warrant, you find in the specifications or drawings for assuming said circles to represent a pivot.

A. Mr. Stocking's assumption is absolutely incorrect; the two dotted lines referred to do not and could not represent a pivot, but do, as a matter of fact, represent the spring C′ and the rod which passes through them, as clearly shown in Fig. 2. There is not a word in the specification that refers to this rod as forming a pivot.

Q. 107. In his answers to questions 4 and 5 Mr. Stocking states that Figs. 1 and 2, respectively, illustrate inoperative devices. Is such statement correct and true in fact?

A. If the drawing is copied literally without reference to the specification and without any intelligence whatsoever, and without a knowledge of the function of the parts, then structures might result which would not be operative.

Q. 108. How far, in your opinion, are the defects of Figs. 1 and 2 material or substantial ones—that is to say, are they such that a competent mechanic, with the drawings and specifications of the Gorham patent No. 223,338 before him, would be led to construct an inoperative or " conditionally " operative device?

A. I do not think that a competent mechanic, with the drawings and specifications of the Gorham patent before him, would have the slightest difficulty in constructing therefrom a perfectly operative device. My reasons for this opinion are substantially as follows: The proper relation of the parts is substantially shown in Fig. 2, and I can scarcely think it would require more than mechanical skill to leave sufficient looseness between the protector and the adjacent parts at its inner or left-hand edge. Any mechanic looking at this figure would immediately see that the only defect in the drawing was that in which the protector is shown as closed. In Figs. 1 and 2 he would see at once that the protector was to lie upon and not include within itself the rod and springs. This evident mistake of the drawings I do not think would bother a constructor of experience for a moment. He would at once see the fallacy of the drawings, and the completion of the structures would not be hindered by the mistakes of a draughtsman. Patent Office drawings, from the nature of the case, are and have been, more especially since the universal use of the photo-lithographic process, made so that they were rather a conventional representation of the thing than a working drawing intended to show the exact structure of each and every part. Within the prescribed limits of the Patent Office sheet, and with the strict rules as to the breadth and nearness of lines in drawings, it has become almost impossible in Patent Office work to represent those details which one can represent and which are intended to be represented in working drawings. I think that for these reasons it is evident why sufficient looseness was not

23 shown between the various parts at the upper portion of Fig. 2, for to so make the drawing as to avoid in this respect Mr. Stocking's criticism would have so complicated the lines that it would have been impossible to make an acceptable drawing without having increased very largely the scale upon which the drawing was made, or else, if the same scale had been preserved, such fine and delicate lines would have to have been used that the drawing would have had insufficient strength of line to enable it to be photo-lithographed. The location of the protector in dotted lines in Fig. 2 and in full lines in Fig. 1 is a simple and sheer draughtsman's error, and the only excuse for such an error is that he was not a sufficient mechanic to see what position the parts would occupy when closed after he had once drawn them correctly when open. As I have before said, this difficulty would not prevent any one constructing a wash-board from making a practically operative device without the use of anything further than mere mechanical skill.

Indeed, in the specification, a good deal is left to the skill of a mechanic, the result accomplished being such a simple one that explicit directions were not considered essential. For example, the spring is to act as a coupler between the wash-board and the protector, or the protector is to be pivoted. Now, the drawings only show that form of structure in which the spring acts as a coupler, but it would be idle to say that a mechanic would be exercising anything but ordinary skill, if from the specifications and drawings he was told to make the Gorham wash-board with a pivoted protector, a drawing of which form is not shown.

It must be borne in mind that the object of the Gorham invention is to make a wash-board with a protector which either can be folded into the wash-board frame or folded out therefrom, and that after this idea was once given to a mechanic, the practical development of it, and its execution in mechanical detail was an exceedingly simple and easily accomplished mechanical feat.

Q. 109. Then, do I correctly understand you that the defects of the drawings are confined to obvious errors in matters of minor detail, locations, and proportions on the part of the draughtsman, and are not such as would deceive or mislead a competent mechanic?

(Objected to as leading.)

A. You understand me correctly; these are my views.

Q. 110. Have you examined the model of the Gorham application, Defendant's Exhibit C; and, if so, do you find the same to represent a practically operative wash-board?

A. Yes; I have carefully examined the model marked Defendant's Exhibit C, and certified by the Patent Office as a duplicate of the model filed with the application of Gorham, the subsequent patent being numbered 223,338. This model represents, on a small scale, a perfect, practical, operative, and useful wash-board.

Q. 111. Is or is not said model in all substantial and material particulars constructed in accordance with the Gorham patent No. 223,338?

A. Yes; it is.

Q. 112. Please state in what, if in any, particulars the wash-board represented by said model differs from that represented in Figs. 1 and 2 of the Gorham patent.

A. The model differs in that when the protector is folded
24 down it lies upon the cross-bar near the top of the wash-board, and it does not lie parallel with the board forming the back of the wash-board, as incorrectly shown by the draughtsman in the drawing. The protector has sufficient looseness of fittings near its inner edge to work easily, but I do not think this is a departure from the drawings for the reasons which I have before given in a previous answer.

Q. 113. Please examine the models Defendant's Exhibits "F," "H," "K," and "M," and the copies of patents Defendant's Exhibits "E," "G," "I," "L," "N," and "Q," being those adduced by Mr. Stocking as illustrative of the state of the art, and state whether or not you find therein or in any or either of them the invention described and shown in the Gorham patent No. 223,338, and set forth in the third claim thereof, giving your reason in each case for such opinion as you may express.

A. I think that before taking up the various exhibits for the purpose of ascertaining whether they contain the Gorham invention it would be best first to recall to mind exactly what is being sought for. What Gorham discovered and patented was a wash-board combined with a protector which is to be below the crown piece, and when folded down to be between the side pieces of the wash-board frame, and which protector could occupy one or two positions; either it could be folded out or it could be folded down against the wash-board—

The merit of this structure being that when the protector is out it would protect the washer-woman while she was using the wash-board, and when it was folded in it occupied practically no space, the wash-board then being of the same bulk as though no protector was attached.

Now, taking Defendant's Exhibits "E" and "F," which represent the structure of an earlier date, I find shown a wash-board having a rough side and a smooth side; either one of each sides are capable of being brought uppermost for use, the portion that carries the operating surfaces being hinged to the frame of the wash-board, so that either surface can be used, and at the same time the clothes can be held by pressure between the frame and the board having the rough surfaces. This board has no protector whatsoever other than the ordinary crown piece of a wash-board, this crown piece being identical with the crown piece shown in Gorham's own patent, and which does not constitute a protector in the sense of the Gorham invention. The mere fact that the portion upon which the clothes are to be rubbed, as shown by this old patent, is itself hinged has no possible bearing upon this case. Gorham does not claim a hinged attrition surface, neither does he claim a crown piece, but he claims a protector of a certain kind located in a certain way which, when open, supplements and adds to the protection that has always been afforded by the crown piece, and which in itself is insufficient.

As the old Barnes device has no protector other than the old crown piece, I think I am perfectly safe in saying that the Gorham invention is not found in the Barnes device or even suggested or hinted at.

The next old structure to which I am referred is represented and described by Defendant's Exhibits "G" and "H." In this old structure there is a protector combined with the wash-board, but when this statement is made about the entire similarity of the old device with the Gorham invention is pointed out.

The structure consists of a wash-board having an attrition surface of bristles, and between the top row of bristles and the crown piece of the wash-board a protector is located. It is ingeniously fixed so that it cannot be folded down on anything or in any way. It sticks up always from the wash-board, and is practically nothing more than a permanent extension from the board, and acts as though the crown piece was made rigid and twice or three times its normal depth. The protector has a very slight motion about pivots, as shown in the model and in the reissue, the purpose of which is not evident. As described in the original patent, no pivoting is shown or described or referred to. There is an enameled cloth apron attached to the protector, which the woman is to hook upon her clothes while using the board. I dare say this arrangement is a very good wash-board protector for some purposes, but it certainly does not show, either in the model, the original patent or the reissue, the Gorham invention, for it does not show a protector which may be folded so that the board may occupy practically the same bulk as though the protector was not there, and which, at the desired times, can be extended out from the cavity into which it had been received when folded and brought into the position for use, so that it will act as a protector to the person using the board. I think it is perfectly clear that this old Epeneter and Grahl invention does not show the invention of Gorham, as it has not got a protector which can be folded into a recess in the board when not desired and again brought out from this recess when its function as a protector is required.

I will now refer to Defendant's Exhibits "I" and "K." These consist of a patent and a model, and they show a wash-board, and that's about all they do show. The rubbing surface of the board is differently corrugated on each side of the corrugations on the same side of the board.

The head of the board, to wit, the crown piece, and the transverse slat, on which the exhibit mark is placed on the model, is pivoted to the side frames of the wash-board, so that the washer-woman can choose which form of corrugation shall be uppermost or presented to her. There is no protector and no pretence of a protector other than the ordinary crown piece, which, in this case, is made to do duty at either end of the wash-board frame. Certainly this does not show the Gorham invention which, as I have said before, includes a protector other than the crown piece, while this old Cole patent has no protector at all.

The next patent to which I shall refer is Defendant's Exhibit "L," and the model, Defendant's Exhibit "M." The device is a wash-

board. It has a double-rubbing surface, one on each side. It has no fixed crown piece, as in the case of the Gorham patent, but it has two wide crown pieces, which are attached to one another at right angles, and pivoted to the side rails of the board in such a way that one of the crown pieces serves as a crown piece and a protector for one side of the board, while the other piece, at right angles to it, serves as a crown piece for the other side of the board. When the board is in use, and it is desired to use different sides of the board, this right angle, double crown piece, is tilted through an angle of ninety degrees, and thus made to serve as a crown piece and a protector for either side of the board. Neither of the crown pieces can fold into or between the side rail of the board, and the tilting of the double crown piece from side to side in no way affects the bulk of the board or its capacity for being packed with its fellow-boards or alone in a box, which is one of the main
26 features of the Gorham invention. The Frike device is merely a wash-board with a hinged top, and does not even suggest what I might call a collapsible protector of the nature of Gorham's. It is clear that this Frike device does not contain the Gorham invention.

Defendant's Exhibit "N," the Stevens Patent, scarcely deserves notice. It is merely for an attachment to a tub in which a wash-board is used, the attachment serving as a protector. The device is not fastened to the wash-board, and forms no integral part of it, and cannot be folded into the cavity below the crown piece and between the side pieces. I am clearly of the opinion that none of these old devices show the combination of the third claim of the Gorham patent.

Q. 114. It has been stated by Mr. Stocking, in his answers to questions 14 and 15, that the combination set forth in the third claim of the Gorham patent, No. 223,338, is limited to one in which the protector is "elastically" pivoted. Please state whether or not you concur in this opinion; and, if so, by what you considered it to be warranted.

A. I do not concur in this opinion, and I do not think the opinion is warranted by anything in the patent. The patent describes a springy or yielding protector, and it then describes, from line 95 through to the claim, that which constitutes the specific invention of the third claim. The first and second claims being specifically for the yielding features, now it may be true that the claim is to include means whereby the protector is held outward and be prevented from falling by gravity when in use to its closed position. If the claim does include means to hold the protector out against gravity when the protector is in use, then I find that the defendant's board, Complainants' Exhibit "Wash-Board," also has means to hold the protector out against gravity, to wit, the lip formed upon the protector and the crown piece, the lips being shown by letters *e b* on the Williams patent. Thus, both the Gorham board and the defendant's board are provided with means to hold the protector out against gravity, which means, for the purposes of the invention of the third claim, are equivalents.

Q. 115. Is there anything in the deposition of Mr. Stocking or in the exhibits adduced in connection therewith which leads you to change the opinion you have heretofore expressed, to wit, that the invention of the third claim of the Gorham patent is in substance embodied in the defendant's wash-board, Complainants' Exhibit "Wash-Board?"

A. No; there is nothing that has caused me to change my opinion. The state of the art, as developed in Mr. Stocking's deposition, leaves Gorham as the first inventor of a wash-board with a protector so arranged that when in use it extends out from the wash-board and when not in use is folded into a cavity of the wash-board adapted for it, the protector, when in such folded position, scarcely adding to the bulk of the wash-board. This whole idea is broadly new with Gorham, and the same, or substantially the same, structure as Gorham claims is found in the defendant's board and is not found in any of the earlier patents illustrating the state of the art.

Adjourned to meet Tuesday, March 24, 1885, at 10.30 o'clock a. m.

27 TUESDAY, *March 24th*, 1885.

Met, pursuant to adjournment, at 10.30 o'clock a. m.

Present: Same counsel as before, and examination of HENRY L. BREVOORT resumed.

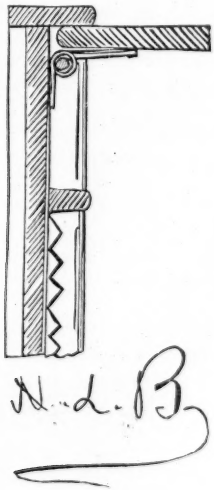
X Q. 116. In your answer to question 108 you referred to the prescribed limits of the Patent Office sheet or drawing as rendering it "almost impossible to represent details," and for that reason sufficient looseness between the various parts of Fig. 2 could not be shown. Is it not a fact that the figures of Gorham's original drawing were and are much larger than those appearing in the copy, Complainant's Exhibit Gorham's Patent, and do you wish as an expert to be understood to mean by said answer that the scale of the original Gorham drawing was too small to show in Fig. 2 a space between the protector C and coiled spring C^1?

A. The original drawings were about one-third larger than the photo-lithograph copies. The space could have been shown in the original drawing, but it is doubtful whether the drawing could then have been accurately reproduced, for if the lines were small enough to show the space they probably would not have stood the reducing incident to the production of copies. As an illustration of this fact I recall several patents that I have seen relating to pianos, in which, for the same reason, the space between the keys is merely represented by a broad, black line, the boundaries of which represent the boundaries of keys.

X Q. 117. Will you please make a tracing of the upper portion of Fig. 2 to the same scale as in the drawings, as nearly as possible, varying from that figure only in such manner as is necessary to make it agree with the model, Defendant's Exhibit "C?"

A. I will and do. I am unable to show the space between the spring and the rod, although I am using an expensive pair of compasses. On this scale the space can only be shown by drawing

under a large magnifying glass with a special set of tools intended for such drawing. The space would not be visible to the human eye. I have attempted to represent it by free-hand drawing, and I now offer the drawing for inspection. Under a magnifying glass it will be seen that I have succeeded in representing a slight space between the spring and the rod, but it is only microscopic. I identify the sketch by my initials.



X Q. 118. Have you any facts as to whether the original Gorham drawing was made from his model, Defendant's Exhibit "C," or was submitted to and approved or not by him to warrant your statement that the so-called defects were such, and the result of error upon the part of the draughtsman?

A. I have no facts in this regard.

X Q. 119. In your answer to Q. 108 you state that "the spring is to act as a coupler between the wash-board and the protector or the protector is to be pivoted." Will you please read from and including "or," line 76, to the end of the sentence, embodying what you read in your answer, and indicating the words upon which you based the above-quoted sentence indicating that the spring might be omitted?

A. I have not said that the spring might be omitted, though known substitutes might be be used in its place. I now quote
28 as requested: "Or the protector may be pivoted to the frame and the spring C^1 act to push or pull the protector into the position illustrated in Figs. 2 and 3."

X Q. 120. In your same answer you state that "the object of the Gorham invention is to make a wash-board with a protector which either can be folded into the wash-board frame or folded out therefrom." Will you please read and embody in your answer lines 19

to 36, inclusive, of the Gorham patent and indicate the words upon which you based your above-quoted statement of the object of Mr. Gorham's invention?

A. In the portion of the patent referred to there is nothing about the folding into a cavity of the protector. This portion of the invention is not referred to until line 95 is reached. In answer to question 15, on the direct in the *prima facie* case, I stated the facts in relation to this matter.

"Protectors have been heretofore employed in connection with wash-boards, and they have been of but two general types, one wherein the protector is rigid and rigidly attached to the wash-board frame. A protector thus constructed and attached is not capable of yielding or moving from its position when the body of the operator presses against it, and it is on this account frequently objected to. The second type is when the protector is attached to the wash-board frame by a joint or pivot, and is allowed a swinging movement, but it possesses no elastic or resilient quality or function, and, when moved by pressure, has no power to return again to normal position when said pressure is removed. My invention is designed to overcome the objections and defects presented in these two old types of protectors. * * *

"Another peculiar feature of my wash-board is the flat manner in which it can be packed, as shown in Fig. 1 of the drawings. This is a great convenience and advantage in packing for shipment; and, moreover, when thus packed the protector is itself protected from injury to which it would otherwise be exposed. This is accomplished by locating the protector, as shown in Figs. 1, 2, and 3 of the drawings, below the crown piece and between the side pieces of the frame." I put this quotation upon the record by request.

X Q. 121. In answer to question 112 you state that the protector lies upon the cross-bar. Do you find in the description or drawing any device for retaining it in that position?

A. Of course not.

X Q. 122. In the same answer you used the expression looseness of fittings. Please explain fully and clearly what you mean by said expression.

A. I mean that the inner edge of the protector is not to be on the one side jammed against the crown piece and on the other side jammed against the coil springs, as in Defendant's Exhibit "A," which is an unmechanical or rather unworkmanlike method of misrepresenting what is shown in the drawing of the Gorham patent.

X Q. 123. In your answer to question 113 you state the merit of Gorham's invention as being that the board is of the same bulk when the protector is folded down. Does not the patent and model fail to disclose such merit, and does not the protector when on the cross-bar, as stated in your answer to question 112, actually lie in a plane wholly above or upon the side frames?

A. In the model, when the protector is folded down, it lies
29 in a plane between the side frames or below their top, which is the location of the plane referred to. The same thing would be true of the drawing, the model being a fair representation of the drawing.

X Q. 124. What do you understand by the words "elastically pivoted," in lines 59 and 60 of the same patent?

A. I understand what is there referred to is that shown in the model where the protector is elastically pivoted—that is to say, so pivoted that the protector will yield to pressure and return to its extended position.

X Q. 125. What do you understand by the words "substantially as shown," occurring in the third claim of said patent?

A. The words are as follows: "Substantially as and for the purpose shown." By "substantially as," I understand is referred to a protector located and having in substance the capacities of the protector shown in the patent; and by the words "for the purpose shown," I understand that the fact of the protector's capacity to so act as a protector for the woman using the board is referred to.

X Q. 126. Do you find in the drawing of said patent any protector which is not elastically pivoted?

A. Fig. 4 shows a protector which is itself elastic, or capable of flexure. The patent also described a pivoted protector with a spring, used to push it or pull it out. This would not be elastic pivoting.

X Q. 127. To what words do you refer for the pivoting which is not elastic?

A. I quote: "Or the protector may be pivoted to the frame, and the spring C^1 act to push or pull the protector into the position illustrated in Figs. 2 and 3." This is a description of Defendant's Exhibit "B."

X Q. 128. What do you understand by the words "my washboard," line 95 of said patent?

A. I understand that he is there referring to a wash-board to which Gorham's invention has been applied. This certainly is his washboard, as is clearly illustrated by the state of the art in this case.

X Q. 129. What do you understand by the words "my invention," line 34?

A. I understand that he is there referring to that feature of his invention which relates to the yielding capacity of the protector and its capacity of returning to the extended position automatically. This is a feature of Gorham's invention which the defendant's board does not embody.

X Q. 130. If the word "peculiar," line 95 of said patent, means "exclusive," or "possessed by none other," do you, in view of the state of the art as disclosed by defendant's exhibit, find any other protector capable of being arranged flat for packing purposes than in the said Gorham patent?

A. I do not.

X Q. 131. Do you find in said patent, either in description or drawing, any construction which will admit of the protector being arranged for packing in such manner that no portion of it shall project beyond the frame-work?

A. No substantial portion will project beyond the frame-work; possibly a little of the inner end of the protector would be above the frame-work, if the exact thickness of parts were adhered to, as shown in the drawing; but, as in the case of the model,

Defendant's Exhibit "C," where no portion of the protector projects, the protector of the patent could, in the shape of a complete manufacture, be made in the same way.

X Q. 132. What do you understand by the word "locating," as it occurs in the last sentence of the clause beginning with the 95th line of said patent?

A. By the word "locating," used in this connection, I understand to be described the fact that the protector is placed in combination with the wash-board below the crown piece and between the two side rails or frames. I do not well see how Gorham's invention can be found in any wash-board where the protector is not so combined with the wash-board.

X Q. 133. Do you find in the description or drawing of said patent any protector capable of being folded flat for packing purposes, and which is itself pivoted to the frame below the crown piece and between the side pieces of the frame? If so, please indicate it.

A. I do not find such a protector illustrated in the drawings, because the protector there shown is not pivoted to the side pieces, but is held by two metal arms. The description, however, describes such a structure at lines 76 and 77—that is, the description describes almost exactly Defendant's Exhibit "B."

X Q. 134. Is the protector C itself attached to any part of the wash-board?

A. In the drawings, no, except through the two metal arms.

X Q. 135. Do you make any distinction between a swinging movement and a folding movement? If so, please indicate it.

A. I do not in this connection. Either form of movement would readily suggest itself to a mechanic as the equivalent of the other when the main idea conveyed by the Gorham patent had once been suggested.

X Q. 136. What mechanical construction do you understand by the attachment of a protector to a wash-board frame "by a joint or pivot which allows a swinging movement" of the protector?

A. I understand that that sentence would refer more particularly to a structure like Defendant's Exhibit "B," while the model, Defendant's Exhibit "C," is rather a folding movement, though no real difference exists between the terms in this connection.

X Q. 137. Do you find described or shown in the said Gorham patent or in the model, Defendant's Exhibit "C," a protector which is capable of returning, unaided at all times, from its packing position to its protecting position?

A. If the protector was a pivoted protector it would return, without any question, always right. If the protector was of the character shown by Defendant's Exhibit "C," then, like the protector of the defendant's wash-board, it would have to be guided into place.

X Q. 138. Do you find in said patent any positive statement that the spring or spring-coupler C^1 may be dispensed with? This question does not call for your construction or understanding of any expression in the patent.

A. There is a positive statement in the patent that the spring C^1

may be used as a spring alone, and not as a coupler, the union between the protector and the wash-board being effected by a pivot.

X Q. 139. What mechanical construction do you understand by the word "device," as it occurs in lines 42 and 46 of said patent?

31 A. I understand that this relates to the structure of the protector, the arrangement of springs or other devices to keep the protector open, because when once the broad idea was given to any one, a mechanic, thinking and reasoning for himself, could produce an infinite number of modifications, all of which would substantially embody Gorham's invention.

X Q 140. In your opinion as a mechanical expert, if the circles shown on the face of the protector in Fig. 3 illustrate merely flattened ends of the arms of the springs, and if the same construction is illustrated in Fig. 2, would or would not the protector, as shown in Fig. 2, be capable of yielding to a limited extent to pressure and returning to position shown in Fig. 2 when said pressure is removed?

A. I do not think that the circles are the flattened ends of the wire. Under the supposition that they were, the protector would have a little movement when opened—that is, it would yield and return in a limited degree when opened.

X Q. 141. Do you find in Defendant's Exhibit "C"—that is, the Gorham model—that when pressure is applied near the upper edge of the protector that its lower edge rides up and down the under surface of the cap piece; if yes, in your opinion as a mechanical expert would such operation assist in preventing the suds from coming in contact with clothes of the operator.

A. I don't think it would have anything to do with it. If the washer-woman operates so violently as to have solid water at the top of the protector, then I don't believe any protector would save her from getting wet; but this is not the ordinary method of washing clothes, and the function of the protector is rather to keep the water spattered by the act of washing, and the foamy suds, from the clothes of the operator.

X Q. 142. In the same exhibit does the protector move bodily away from the cap piece at any time; and, if so, when?

A. Yes; when it is closed it moves down and away from the cap piece.

X Q 143. Please indicate, in the drawing of Defendant's Exhibit "D," the Williams patent, by the letter of reference therein, the part which he designates in lines 38 and 39 of his description as the "protector and cross-piece."

A. I think that he gives the protector a double name, calling it a protector and cross-piece; in other parts of the patent he calls the piece F a protector and the piece B the cross-piece.

X Q. 144. Is the said piece F provided with pivots?

A. There are two pivots about which the slots in the arms turn and slide.

X Q. 145. Is a movement of any portion of the piece F in a curved line and independent of all other parts of or attachments to the wash-board necessary or possible in the transfer of the same

from its position as shown in Fig. 1 to its position as shown in Fig. 2?

A. It must go through a curved line to get in the position as shown in Fig. 1 to get to the position shown in Fig. 2.

X Q. 146. Please describe the movements and directions of movements of the piece F, in changing it from and to the positions stated in the last question.

A. It first, in the board which is marked as an exhibit, moves outward in the arc of a circle. When the engaging lips *e*
32 and *b* are freed the protector is slidden upwards, and then it is slidden under the crown piece, moving either in the arc of a circle or in a straight line.

X Q. 147. Are the slots lettered S in Fig. 2 essential elements to the operation and usefulness of the part F when connected with the wash-board frame by the rigidly attached arms E?

A. Yes; these parts are their equivalent.

X Q. 148. Do you find in the Gorham patent any equivalent elements to the slots?

A. Yes; the control of the motion of the protector, either by the walls of the holes for the pivots or by the spring arms, as in the model, Defendant's Exhibit "C."

X Q. 149. Would the part F be substantially maintained in an operative position, as shown in Fig. 1, if the screws *d* were removed?

A. No; I think not.

X Q. 150. Do you find in the said Williams board, Complainants' Exhibit "Wash-Board," a protector which, when performing its function, is located below the crown piece and between the side pieces of the frame? If yes, please indicate the same.

A. I do. The portion of the arms E are practically the equivalents of that portion of the protector of the Gorham patent which lies beneath the crown piece. Neither this portion of the arms E or the inner edge of the Gorham protector performs any functions as a protector, but they are in the constructions absolutely necessary to the existence of the protector as such.

X Q. 151. Do you find in the Defendant's Exhibit "L M" the Anna Frike patent and model, a part F, which serves in any degree the function of a protector, and which is located below the cap piece and between the side pieces of the board and provided with pivots mounted in said side pieces?

A. No; I find none in the sense in which the word protector is used in the Gorham patent—that is to say, a protector projecting out at right angles from the plane of the board and forming an extension, as it were, of the crown piece of the board. The exhibits referred to in the question merely have a double-hinged crown piece.

X Q. 152. If claim 2 of Defendant's Exhibit "Q," Epeneter reissue, is construed to be for a protector pivotally attached to the upper portion of the frame of a wash-board, do you find such a protector in either of said Defendant's Exhibits "B," "F," "H," "K," or "M;" if so, in which of said exhibits?

A. I only find it in the Williams patent, Defendant's Exhibit "D"—that is to say, a protector which is arranged at, or substantially at, a right angle to the general plane of the board.

X Q. 153. If claim 1 of the Epeneter reissue No. 9022 were construed to cover the combination of a wash-board and swinging protector attached to the upper portion of said board, do you find in any of the complainants' or defendant's exhibits such combination; if yes, which?

A. That broad invention would be found in the various exhibits representing the Gorham structure, various exhibits representing the defendant's structure, and inasmuch as a crown piece is a protector to a degree it would be found in the Frike structure, but this would only be so under a very broad interpretation of the claim, as stated.

33 X Q. 154. If the words from line 30 to 34 of the Gorman patent, beginning with "but" and ending with removed, were construed to point out the novel mechanical quality or function of Gorahm's protecter, what mechanical construction would you understand by the word "constructed," in claim 3 of Gorham's patent?

A. I should understand that the word "constructed" in the claim referred simply to the inherent property that all Gorham's boards must possess, of having a protector which can fold down into a cavity prepared for it, and this would be true whether said protector was provided with a spring or was not, for the purpose of holding the protector extended.

X Q. 155. Referring to the Barnes patent, Defendant's Exhibit "E," will you read and embody in your answer the terms and letters of reference by which he designates a part as being an ordinary tub wash-board and another part as the upper part, and state the words upon which you base your statement that the lower part is pivoted to the upper part?

A. Part B is pivoted to the part A, and A is the lower part.

X Q. 156. When the upper part is turned over upon the upper end of the "tub wash-board," and upon the rougher rubbing surface thereof is it not a fact that the said upper part extends from and at an angle to the "tub wash-board," and terminates at the the cap piece, and is it not a fact that suds thrown upwardly upon the "tub wash-board," in the act of washing clothes thereon, would undoubtedly pass along and upwardly upon said inclined portion of the upper part and probably against the cap piece?

A. In any position that the parts B and A will occupy when in use, the part B would act as a protector at all times, exactly as would the part A and the cap piece in the Gorham board.

X Q. 157. Does the fact that the part B stands at an angle to part A make B any more of a protector?

A. I should scarcely think so; I do not believe the board was intended to be used with the rough side up and its top under the part B.

X Q. 158. Is it not the fact that the upper part is capable of being arranged in a common plane with the "tub wash-board," so that the

latter is not materially increased in thickness, and therefore the whole device is adapted to be packed flat?

A. Yes; it could be packed flat.

X Q. 159. Referring to the Epeneter patent, Defendant's Exhibit "G," do you find a part lettered D and designated as for "keeping the operator from getting wet," which is located below the crown piece and between the side pieces of the wash-board frame?

A. I find the piece lettered D described as for the purpose inquired about. It is arranged at its bottom so that a very little of the protector is in between the side pieces. The bulk of the protector is wider than the space between the side pieces, and could not be placed in between them even if there was room in other directions.

X Q. 160. Is any other change of construction required to render the part D capable of being packed substantially flat, and such as would increase the extent to which said part folds, for instance, upwardly and away from the rubbing surface?

34 A. The protector would have to be reduced in width; it would have to be hinged in a different location, and the wash-board would have to be altered in shape so as to receive it. If these alterations were made the protector could be packed flat.

X Q. 161. If the ends of the part D which projects over the side frames A were removed, would not said part fold completely down onto the cap piece and rest there?

A. Yes; it would overlie the cap piece unless its lower end struck the board that carries the bristles; whether it would or not I cannot tell exactly.

X Q. 162. If the upper end of the protector was also cut off would the protector fold down flat into the space below the crown piece and between the side frames of the wash-board?

A. Yes; but we must not overlook the fact that if the sides of the protector D were throughout cut away so that the protector was no wider than the space between the side frames, then the protector would not stand out at right angles with the plane of the rubbing surface, but would fall forward on the rubbing surface.

X Q. 163. If a substitute of any well-known rubbing surface was made for that of bristles, would not the said part D fold flatly upon such substituted rubbing surface if the width of the part D were reduced to its dimensions between the side frames?

A. Yes, it would; but it would not stand up and act as a protector while the woman was washing.

X Q. 164. Is not the Cole's, Defendant's Exhibit "I," cap piece and branding board pivotally attached to the wash-board at a point below the crown piece and between the side pieces of the wash-board frame?

A. Yes; but it is not below the crown piece, for the crown piece is carried by the swinging arms.

X Q. 165. Can the parts specified in the preceding question be "folded between the legs at either end of the board to occupy little space when it is required to pack the same for transportation and other purposes," as stated in said patent?

A. Yes; the parts carried with the swinging arms can be swung

in between the side rails of the frame of the board, the swinging portion forming the top of the board in either position.

X Q. 166. Is it not a fact that in all wash-boards (having a branding board or transverse board above the rubbing surface, while standing in a tub inclined, as usual, when in use) the suds ride up along and upon said branding board, and are in a measure prevented by such portion of said board, which projects above the tub, of coming in contact with the clothes of the washer?

A. Yes.

X Q. 167. Referring to the Frike patent, Defendant's Exhibits "L" and "M," is not each of the crown pieces H capable of folding down upon the frame of the wash-board?

A. Yes; but when one is folded down upon the top of the frame its neighbor projects at a right angle from the frame; thus no saving in bulk results in packing purposes.

X Q. 168. What, if any, is the material difference in extent of folding and of compactness for packing between Frike's piece H, upon the side pieces, and Gorham's piece C, upon the cross-bar?

35 A. In Frike the entire cap pieces are always above the upper surface of the frame on both sides; in Gorham's method scarcely any of the protector is left above the upper surface of the side frames, and none need be above.

X Q. 169. In your opinion as an expert, would it require more than mechanical skill to construct a single rubbing surface and single crown piece board H, after seeing Frike's double board?

A. No; it would require no invention to leave off one side of Frike.

X Q. 170. As the surface of the square shaft F, adjacent to the projecting piece H, occupies the usual position of a portion of a branding board, in your opinion does it or not perform in any degree the functions of a branding board in preventing contact of the suds with the clothes of the washer?

A. Not to any extent, if the other half of the cap piece was removed, for then suds could find their way through between the real branding board and the pivot of the cap piece. It must also be borne in mind that if the half of the cap piece was removed that the other half would fall down while in use, and thus no protector whatever would be had. It has been suggested that one of the cap pieces might be cut off on a plane with the surface of the side rails on one side, while the other cap piece was left as it is; if this was done and the reduced cap piece was rested against the tub, then the full cap piece would stand up.

X Q. 171. Referring to Gorham's patent, 223,338, what direction do you understand as being indicated by the word "below," line 2 of claim 3 of said patent—that is, does it specify a mechanical location of the protector below the upper edge of the cap piece or a distance away from the cap piece downward along the side pieces of the frame-work?

A. I think it means both.

X Q. 172. What would retain the protector in position at a right angle to the board, if the spring C^1 were removed?

A. Nothing would; the patent contemplates the use of some means to hold the protector at right angles with the board.

X Q. 173. Do you find any description or illustration in the patent of any substitute or equivalent for the spring?

A. No; the patent shows a spring—the best means.

Redirect examination by Mr. BELL:

R. D. X 174. Referring to the sketch marked "H. L. B.," which you have appended to your answer to X Q. 117, I notice a trifling discrepancy between the same and the sketch "E. B. S.," appended by Mr. Stocking to his answer to X Q. 70. Will you please explain to what the discrepancy is due, and also state in what, if in any, particulars these two sketches differ substantially from Fig. 2 of the Gorham patent?

A. The sketch marked "E. B. S." shows the spring and the rod as a little too large. The only difference between the sketches and Fig. 2 of the Gorham patent is that in both of the sketches a little V-shape space exists between the spring and the under side of the protector; this space is exceedingly trifling.

HENRY L. BREVOORT.

Sworn and subscribed before me this twenty-fourth day of March, A. D. 1885.

SAMUEL BELL,
Special Examiner.

Adjourned to Wednesday, March 25, 1885, at 12.30 o'clock p. m.

36 WEDNESDAY, *March 25th*, 1885.

Met, pursuant to adjournment, at 11.30 o'clock a. m.

Present: Same counsel as before.

JAMES T. SARGENT, a witness produced on behalf of complainants, being duly sworn, deposes and says as follows:

Q. 175. Please state your name, age, residence, and occupation.

A. Name is James T. Sargent; age, 31; residence, Cleveland, Ohio, and by occupation a manufacturer of wash-boards.

Q. 176. For how long have you been engaged in the wash-board business?

A. As a salesman and manufacturer, since July, 1876. When I was a boy I worked in a wash-board shop at Toledo, Ohio.

Q. 177. Has your experience in the wash-board business been such as to make you familiar with the various descriptions of wash-boards which have from time to time been placed on the market in the regular course of the trade?

A. It has.

Q. 178. Have you examined the patent of J. M. Gorham, No. 223,338, dated January 6th, 1880; and, if so, do you understand the construction and operation of the protector described therein?

A. I have examined the patent, and do understand the construction and operation.

Q. 179. Have you, in the course of your business, manufactured or sold any wash-boards having protectors combined therewith capable of being folded into a cavity or recess of the frame, as set forth in said patent; and, if so, to what extent?

A. Why, I have sold them very largely in different parts of the country, from California to Maine.

Q. 180. Please examine the copy of the Gorham patent, No. 223,338, now handed you, Complainants' Exhibit Gorham Patent, and, from your knowledge as a manufacturer, state whether or not the description and drawings of the same are sufficient to enable any competent workman to construct a useful and practical operative wash-board in accordance therewith.

A. I think it is.

Q. 181. Would you, as a manufacturer, having the specifications and drawings before you as a guide, find any difficulty in constructing a useful and practically operative wash-board therefrom?

A. I would not.

Q. 182. It has been alleged by Mr. Stocking, a witness on behalf of defendant, that Figs. 1 and 2 of the Gorham patent are erroneous and defective in some particulars, and such defects are referred to by Mr. Brevoort, a witness on behalf of complainants, in his answer to Q. 105. Will you please read said answer and state whether you consider Mr. Brevoort to be correct, and also whether the errors or defects referred to are material or substantial ones, or are sufficient to deceive or mislead any intelligent or competent mechanic?

A. I think Mr. Brevoort's ideas are correct in regard to that. I would not have a mechanic in my employ who could not
37 make a perfect working wash-board from these drawings. I do not consider them material or substantial or in any way calculated to mislead or deceive a competent workman.

Q. 183. From your knowledge of and practical experience in the manufacture and sale of wash-boards please state what, if any, substantial merits or advantages or benefits to the trade result from the feature shown and described in said patent, to wit, combining with a wash-board a protector constructed to fold down into or upon the wash-board, even with or below the general plane of the wash-board frame.

A. The object of the protector is to keep the water from splashing against the operator's clothing when in use, and protectors have been made rigidly attached to a wash-board that was impractical on account of their not packing close enough for shipment. Were we to make this same protector rigid so that it could not be folded into the soap box, we could not sell it on the market in a successful way. The chief cause of its popularity is from the fact that it folds down into the soap box and is entirely out of the way when packed for shipment. There are now made protectors which are rigidly attached, by allowing the head or crown piece to project above the plane of the surface of the wash-board and does not interfere with the sale of our protector, which folds into the box, for the reason that a protector so constructed is liable to be broken in shipping, and I think that the popularity of our protector is the folding of the same

into the soap box. We term the cavity into which the protector folds as the soap box or soap receptacle.

Q. 184. Then do I understand you correctly that the feature specified in your last answer is one that has been appreciated by the public to a sufficient extent to render your boards popular and materially increase your sales?

A. So much so that, if we did not have the protector as constructed now, we should certainly quit the business of manufacturing wash-boards.

Q. 185. In your manufacturing business do you or not find the employment of the folding protector before referred to to be of any advantage to you in packing and shipping; and, if so, to what extent?

A. By folding down into the box the wash-board does not take up any more space in packing than any other wash-board without the attachment, and if the protector was rigidly attached it would take up so much more space in packing that, in my judgment, the classification of freight would be certainly higher. We can ship the goods cheaper by packing them closely than we could if they were packed loosely, and are not liable to be broken in transit.

Q. 186. Please examine Defendant's Exhibit "A," which is stated by Mr. Stocking to be in accordance with Fig. 2 of the Gorham patent, and state whether or not said model is a mechanical and workmanlike representation of what is shown in said figure.

A. It does not convey any idea to me of this patent. It is not any better than though it was rigidly attached. It seems to me that a man that would make such a thing had not the slightest mechanical ideas of the proper construction of this patent.

Q. 187. Then I understand you that said model misrepresents said figure, and is not such as an honest, intelligent, and capable mechanic would make with the patent as his guide?

38 A. Certainly; yes; that understanding is correct.

Q. 188 Please examine the models of the Barnes patent, Defendant's Exhibit "F," the Epeneter and Grahl patent, Defendant's Exhibit "A," the Cole patent, Defendant's Exhibit "K," and the Frike patent, Defendant's Exhibit "M," and state whether or not in your business experience you have found wash-boards similar thereto on sale in the market; and, if so, to what extent.

A. I have sold wash-boards since July, 1876, up to the present time, as a salesman and as a manufacturer, and have devoted my entire time in ascertaining any information connected with the sale and manufacture of wash-boards, and think I am familiar with all popular brands of wash-boards, and make it a part of my business to go and investigate any new wash-board put on the market—if I can't buy a sample of the same—and I have not lost two months' time during my experience in the wash-board business at any one time from traveling from Missouri river to Maine, taking in all principal jobbing points, and have made two trips to California, Washington, and Oregon Territory within the last two years, selling wash-boards.

I never came in contact with a wash-board like Exhibit "F" and never saw one.

I never saw one like Exhibit "K," and confident it was never on the market.

I never saw one like Exhibit "H," with the apron attached. I made some once myself with this protector rigidly attached to the legs, midway in the centre of the soap box. I never saw one on the market pivoted.

I have seen boards like Exhibit "M," in the St. Louis (Mo.) market, but nowhere else. I should not suppose they make more than a thousand or fifteen hundred dozen in a year. It has this crown piece sticking up in the air, and you cannot pack it, and that is the objection to it.

Q. 189. Does the Frike wash-board, Defendant's Exhibits "L" and "M," possess, in any degree whatever, the merits or advantages which, in your preceding answers, you have ascribed to wash-boards constructed in accordance with the Gorham patent?

A. Well, it does not fold into the soap box, and when it is in operative position it is not any different than a protector rigidly attached. From the fact that the bottom of the swinging cap piece rests on the flange of the tub when in operative position and forms a soap receptacle on either side when reversed, I don't consider it like the Gorham patent or having any bearing on it: only as a protector to catch the splash, the same as any other rigidly attached protector.

Q. 190. Does it present any of the advantages, as to packing and shipping, possessed by the Gorham board?

A. It does not.

Q. 191. Suppose the portions of the protector of the Epeneter and Grahl model, Exhibit "H," lying immediately above the side frames or legs were cut away, so as to increase the amount of swing on the pivots, would that be sufficient to make it a useful and practicably foldable protector?

A. It would be good for nothing, as there would be nothing to hold it in position, and it would be in the way of the operator when in use, as it would be lying either on the surface or the head of the wash-board, preventing the use of the soap box.

39 Cross-examined by JAMES PARSONS, Esq., counsel for respondents:

X Q. 192. Mr. Sargent, you are one of the plaintiffs in the suit — Gorham and Sargent, are you not?

A. I am.

X Q. 193. What interest have you in the manufacture and sale of the complainants' wash-board?

A. One-half interest.

X Q. 194. What was your training for the manufacture of wash-boards?

A. When I was a boy I worked for day wages in and about a a wash-board shop, and from the time I commenced as traveling salesman in said business I put in every moment's time possible in

learning the practical construction of wash-boards and the machinery used in said business, when I was at the factory.

X Q. 195. Did you receive any instructions in drawing or mechanics, or were you an apprentice to any trade by which you could acquire the technical knowledge and skill required in the art of manufacturing?

A. I never received any instructions in drawing, but did receive from time to time instructions regarding the constructions of wash-boards from the practical men employed by my previous employers and my own employees since I have been in the business, and that I have a natural taste and desire for a full knowledge of the law of mechanics and make the same a study in so far as our own business is concerned, and that I feel perfectly competent to judge the difference between a wash-board properly constructed and one not done so. Regarding the serving of an apprenticeship, I never was put under any particular instructor of any branch of mechanics, but from the time I was eleven years old I have worked on machines in and about tub and pail factories, wash-board factories, spoke and hub factories, rake factories, &c.

X Q. 196. Then you have not received what is commonly known as a technical education in any art or calling, but have acquired your information by observation and attention while at work in the several businesses which you have specified; is that correct?

A. Yes; that is correct.

X Q. 197. Have you paid any attention to mechanics, apart from these several callings or occupations in which you have been engaged?

A. I am a very close observer of all improvements in machinery and construction of manufactured articles and have a very clear idea of their proper workings.

X Q. 198. Have you been associated with Mr. Gorham, co-complainant in this case, since the 6th of January, 1880?

A. I have not, but joined J. H. Gorham, now deceased, in a copartnership August 25th, 1881, who died about four months after that time, and J. M. Gorham was appointed his executor. It was stipulated in articles of copartnership that in case of death of either of the members of the firm the surviving member should continue the business on to the expiration of the term of said partnership, the deceased estate to furnish a representative of same at their own expense. Under this arrangement the business has been carried on under the original agreement of copartnership.

X Q. 199. What was the board as originally put on the market under the Gorham patent, January 6th, 1880, and how did it differ from the present board?

A. I came in contact with the board as soon as it was put out, and had cause to notice it, as I was then traveling for a competing firm.

The first protector I saw was with the springs, one end attached to the protector and the other end of the spring coil was fastened to the legs of the board by means of a blunt nail or rod driven from the outside of each leg until it passed through the coiled

spring on the inside of the leg. The coiled spring was fastened either to the leg or to the pin, I don't remember which. It was the same on each side, right and left springs, and the protector was folded down into the soap box and a small nail driven in the side of the leg to hold it down in the soap box, so as to be out of the way when being shipped.

The difference between that construction and the present one is that a tennent has been cut on the end of the protector and the coiled spring put over the tennent, the ends of the springs protruding into the protector board to hold it and give tension, the tennent and spring being countersunk into a hole into the leg of the board with a slot to hold the other end of the coiled spring, thus giving a perfect tension to the spring, the action of the protector, as now constructed, being the same as the original construction.

X Q. 200. How long did you continue to use the original board which you have described without making any change in it?

A. The change was made before I had a right to manufacture it.

X Q. 201. Then the board, Defendant's Exhibit "B," was in use in its present form, as described by you, before August, 1881; is that correct?

A. Yes, sir; there has been no change since I have been manufacturing.

Adjourned to meet Thursday, March 26th, 1885, at 9.30 o'clock a. m.

THURSDAY, *March 26th*, 1885.

Met, pursuant to adjournment, at 9.30 o'clock a. m.

Present: Same counsel as before, and the examination of JAMES T. SARGENT resumed.

X Q. 202. About what date was the Gorham board put on the market?

A. I can't tell correctly; about two years, more or less, before I entered into partnership.

X Q. 203. Did you handle the board during that time—that is, from the time it came on the market and before you went into partnership with Gorham?

A. I was in the employ of Gorham, Stark & Co., formerly manufacturers of the protector, about three months from January, 1881, until Gorham, Stark & Co. failed; then, I also worked with the assignee in closing out the stock, and sold the protector boards on the market in the West only at that time.

X Q. 204. Was that protector board the old Gorham board which you described in your answer to X Q. 199?

A. It was not; it was the same as made now.

41 X Q. 205. Did you have anything to do with the board before January, 1880, or did you find it anywhere on the market?

A. I did not have anything to do with the board before January, 1880, but I found it on the market.

X Q. 206. Was that the old board or the present board?

A. I saw both boards from the time they came out until I commenced to travel as a salesman for Gorham, Stark & Co. I do not remember when the change from the old to the present board was made.

X Q. 207. Did you hear any complaint made against the old board among the purchasers whom you met in your travels?

A. I did in regard to the spring being weak.

X Q. 208. Was that the only objection raised by the purchasers against the old board?

A. The other objection was that the spring got off of the blunt-headed nail that held the same in position.

X Q. 209. Was there no complaint against the protector not lying flat for packing purposes or for shipment?

A. Not when they were packed properly and fastened by a nail in the side of the leg over the protector.

X Q. 210. Was there any interval during which the wash-board and protector were withdrawn from the market on account of complaints made against the protector and until the new board was ready for introduction?

A. None that I know of.

X Q. 211. Would you have been likely, from your business, to have known of any withdrawal, had there been any such withdrawal?

A. Yes; I knew, from time to time, that they were having trouble with their boards and the boards were being returned and replaced with protectors properly attached.

X Q. 212. Will you examine Defendant's Exhibit "A" and point out where the arrangement differs from the drawing of Fig. 2 in Gorham's patent of January 6th, 1880?

A. The exhibit is just the same as the drawing, but I don't think that drawing represents the intention of the inventor, and the exhibit does not show anything like what the protectors were, as first made, that I saw, as it does not yield to pressure when in use, and could not be folded down without either breaking the protector board or forcing off the cap piece. The first protector I saw the coil of spring was sufficiently large to allow of a tension of the spring over the pin that held the spring in position. The Exhibit "A" looks about the same in appearance as the one I first saw.

X Q. 213. Does the arrangement of the present board correspond with the protector in Gorham's double wash-board, Defendant's Exhibit "P," except that the spring and tennent is inserted in a removable part instead of in the leg itself of the wash-board?

A. It is the same protector, but it is only attached to that piece and made to reverse from one side to the other by being taken out and placed in position on the opposite side.

42 X Q. 214. What is the price per dozen, at wholesale, of the Gorham board, Defendant's Exhibit "B?"

A. The regular price is $2.15 per dozen in car lots; a rebate of ten cents is allowed, but we sell very few full car lots.

X Q. 215. About how many wash-boards are there on the market?

A. There are twenty-five or more, and perhaps thirty-five, double

wash-boards on the market made on different brands. There are as many and more of the single, made under different brands, but there is only one protector board besides our own that sells to any extent, and that is the defendant's wash-board, Complainants' Exhibit "Wash-Board." That O. Lapham & Co., of Cleveland, Ohio, who manufacture on royalty the "Complainants' Exhibit Wash-Board," are making a head board to another wash-board about twice the width of the head to an ordinary wash-board, and branded "Protector," and that they have offered it throughout the territory we have traveled in in selling our goods, and as yet I have not seen them in any store where we have sold "protectors," although the price of these wide head-piece boards is 15 to 25 cents per dozen less than we hold ours to the trade, as near as I can learn from the buyers.

X Q. 216. What is the extent of the wash-board trade in the United States?

A. Oh, there are anywhere from three to five hundred thousand dozen sold in a year.

X Q. 217. What is the profit you make in sales by the dozen?

A. On fancy crimp designs profits range from ten to thirty-five cents per dozen; on common single wash-boards without protectors, nothing. We attach our spring protector to fancy designs or crimps only, and charge only a very slight advance over the cost of making the protector attachment to the price of our fancy crimp wash-boards, as an inducement to the trade to buy our "Peerless" brand, which is our fancy crimp.

X Q. 218. Was the invention which you individually made, by inserting or sliding a protector in grooves, attached to or made in the legs of the wash-board, as referred to in your answer to Q. 188 in your examination-in-chief, removable?

A. It was not. I did not invent the construction referred to, but merely made it as a modification, as referred to in that model.

Redirect-examination by J. SNOWDEN BELL, Esq., of counsel for complainants:

R. D. Q. 219. In your answer to X Q. 212, referring to the model, Defendant's Exhibit "A," you say "the exhibit is just the same as the drawing." Do you mean by this that the errors of the drawing, Fig. 2, have been exactly copied and followed in the model?

A. I do.

R. D. Q. 220. Then while the model "is just the same as the drawing," in the sense of being a "Chinese copy," is it the same in the sense of being an honest, intelligent, or workman-like representation of the structure intended to be shown by said Fig. 2, and explained by the descriptive matter of the specification?

A. It is not.

R. D. Q. 221. Unless the constructer of the model was as
43 careless or incompetent as the draughtsman must have been, do you see any possible reason why he failed to allow a little space between the coiled springs and the protector, instead of jamming the protector tightly between the coiled springs and the cap piece, as in the model?

(Objected to as leading.)

A. I do not.

JAMES T. SARGENT.

Sworn and subscribed before me this 26th day of March, A. D. 1885.

SAMUEL BELL,
Special Examiner.

Thereupon the examination is adjourned *sine die.*

44 *Complainants' Exhibit "Gorham Patent."*

UNITED STATES PATENT OFFICE.

JOHN M. GORHAM, of Cleveland, Ohio.

Wash-Board.

Specification forming part of Letters Patent No. 223,338, dated January 6, 1880; application filed November 27, 1878.

To all whom it may concern:

Be it known that I, John M. Gorham, of Cleveland, in the county of Cuyahoga and State of Ohio, have invented certain new and useful improvements in wash-board frames; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings, which form part of this specification.

My invention relates to wash-boards, particularly to the combination, with a wash-board, of a protector constructed to bend or yield to pressure and to return to position when said pressure is removed. This protector is to shield the person of the washer from splashing water or suds.

Protectors have been heretofore employed in connection with wash-boards, and they have been of but two general types—one wherein the protector is rigid and rigidly attached to the wash-board frame. A protector thus constructed and attached is not capable of yielding or moving from its position when the body of the operator presses against it, and it is on this account frequently objected to. The second type is when the protector is attached to the wash-board frame by a joint or pivot, and is allowed a swinging movement, but it possesses no elastic or resilient quality or function, and, when moved by pressure, has no power to return again to normal position when said pressure is removed. My invention is designed to overcome the objections and defects presented in these two old types of protectors; and as said invention broadly comprehends any wash-board protector constructed to bend or yield to pressure and to return to position when said pressure is removed, it is apparent that I am not to be confined to any specific form or mere construction and device, inasmuch as a variety of modified mechanical structures

may be adopted in embodying my said invention. I will, however, illustrate and describe one or two effective forms of device according to this invention.

In the drawings figure 1 illustrates a wash-board and its protector made according to my invention. This figure is in longitudinal vertical section, and it represents the protector as laid down upon the face of the board as packed for shipment. Fig. 2 is a similar view of the same device, only the protector is shown as freed and sprung out into operative position. Fig. 3 is a front view of the device, as shown in Fig. 2. Fig. 4 represents a modified form of my device, wherein the protector, instead of being formed from a rigid piece and elastically pivoted to the frame, as shown in Figs. 1, 2, and 3, is made from a piece of rubber, spring metal, or equivalent material susceptible of itself yielding and returning to position, and this is rigidly fixed to the wash-board frame, as shown. Fig. 5 shows another modified embodiment of my invention, merely illustrating a different spring-coupler, C′, from that shown in Figs. 1, 2, and 3.

A is the wash-board frame, which may be of any size, description, or material. B is the rubbing-surface, which may also be of any character.

C is the protector, and C′ a spring, which may be either a coupler between the protector and wash-board frame, as shown in Fig. 5 of the drawings, or the protector may be pivoted to the frame and the spring C′ act to push or pull the protector into the position illustrated in Figs. 2 and 3.

The construction of the device shown in Fig. 4 I have already sufficiently specified in the preceding explanation of the drawings.

The operation of my device is readily understood. The spring C′, or the elastic character of the thing itself, as shown in Fig. 4, serves always to keep the protector in operative position. (See Figs. 2 and 3.) When the body of the operator presses against it, it yields in such a way as at the same time to press snugly against her person, and also to return at all times to position when said pressure is removed. It thus becomes very effective as a protector, while at the same time it is not wearing to the person or clothes of the operator.

Another peculiar feature of my wash-board is the flat manner in which it can be packed, as shown in Fig. 1 of the drawings. This is a great convenience and advantage in packing for shipment; and, moreover, when thus packed the protector is itself protected from injury to which it would otherwise be exposed. This is accomplished by locating the protector, as shown in Figs. 1, 2, and 3 of the drawings, below the crown-piece and between the side pieces of the frame.

What I claim is—

1. In combination with a wash-board, a protector constructed substantially as described, so as to yield to pressure and to return to position when said pressure is relieved, substantially as and for the purpose shown.

2. The combination, with a wash-board, of a protector and a spring, said spring interposed between the wash-board and protector,

and constructed to operate in retaining said protector in its open position and to return it to that position when moved therefrom.

3. In combination with a wash-board, a protector located below the crown-piece and between the side pieces of the wash-board frame, and constructed to fold down into or upon said wash-board even with or below the general plane of said wash-board frame, substantially as and for the purpose shown.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JOHN M. GORHAM.

Witnesses:
JNO. CROWELL, JR.
W. E. DONNELLY.

(Here follows diagram marked p. 46.)

47 (2–175.)

COMPLAINANTS' EXHIBIT "ASSIGNMENTS."

18885.

DEPARTMENT OF THE INTERIOR.

[Vignette.]

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of all instruments of writing found of record under letters patent 223,338 up to and including February 7, 1884, recorded in liber and page as designated upon the margin of each copy. Said records have been carefully compared with the originals and are correct transcripts thereof.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 15th day of February, in the year of our Lord one thousand eight
47*a* hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[SEAL.] (Signed) BENJ. BUTTERWORTH,
Commissioner.

47*b* Liber W 26, p. 82.

Whereas I, John M. Gorham, of Cleveland, county of Cuyahoga, State of Ohio, am the sole owner of letters patent of the United States of America for an improvement in "wash-boards," which letters patent are numbered 223,338, and bear date the sixth (6th) day of January, in the year one thousand eight hundred and eighty (1880); and whereas Sarah Gorham, of Cleveland, county of Cuyahoga, State of Ohio, is desirous of acquiring the entire interest in the same:

J. M. GORHAM.
Wash-Board.

No. 223,338. Patented Jan. 6, 1880.

Fig. 1.

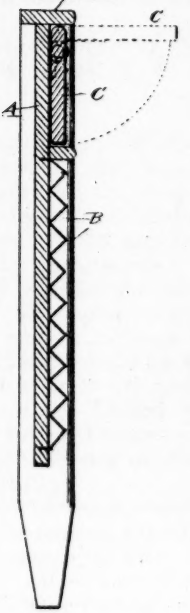


Fig. 2.

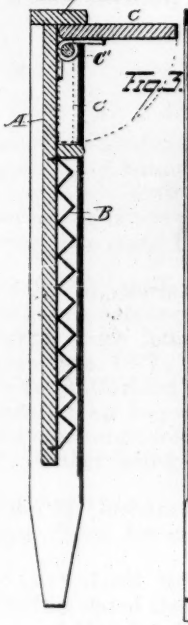
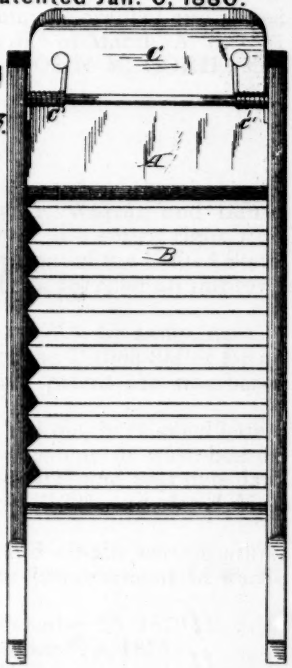


Fig. 3.



No. 399.
Sargent Bal &c.
v.
Burgess
p. 46.

Fig. 4.

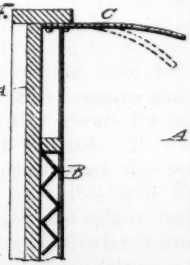
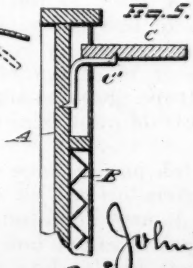
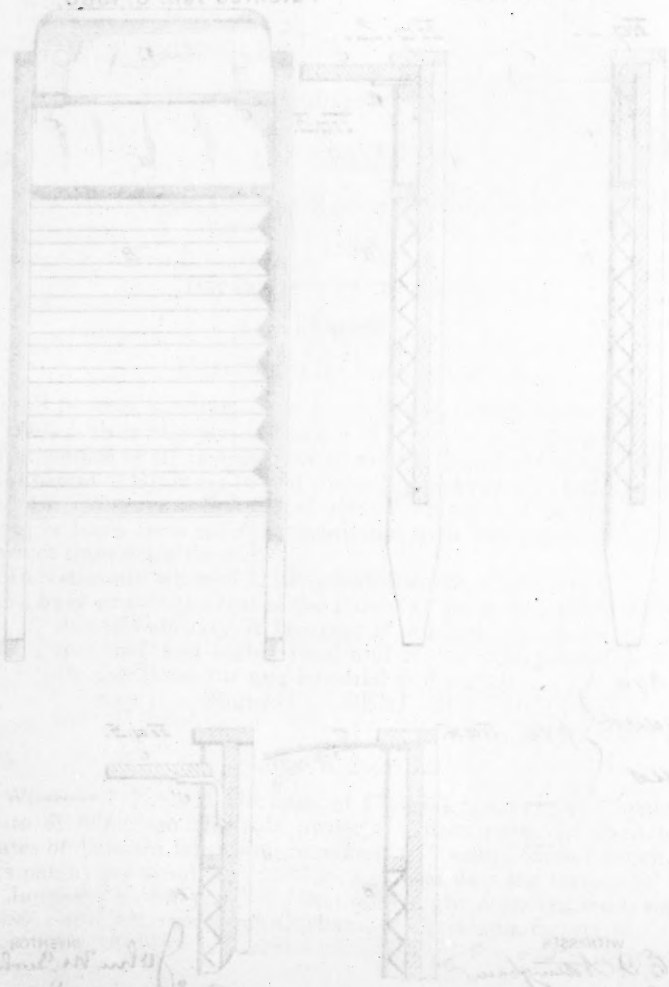


Fig. 5.



WITNESSES
E. D. Nottingham
Geo. D. Seymour

INVENTOR
John M. Gorham
By Leggett & Leggett.
ATTORNEYS.



Now, therefore, to all whom it may concern, be it known that for the sum of fifteen hundred dollars ($1,500) and other valuable consideration to me in hand paid, the receipt of which is hereby acknowledged, I, the said John M. Gorham, have sold, assigned, transferred, and set over, and by these presents do sell, assign,
47*c* transfer, and set over, unto the said Sarah Gorham all the right, title, and interest whatsoever which I have in and to the said improvement in wash-boards and in and to the letters patent therefor aforesaid, the same to be held and enjoyed by the said Sarah Gorham, her heirs and assigns, to the full end of the term for which said letters patent are or may be granted and issued.

Witness my hand this sixteenth (16th) day of March, A. D. 1881.

JOHN M. GORHAM.

Recorded May 3d, 1881.
Ex'd: H. M. H., E. A. M.

47*d* Liber I 27, p. 32.

Whereas John M. Gorham, of Cleveland, county of Cuyahoga and State of Ohio, did, by asignment of Samuel E. Warran and Daniel M. Fisher, obtain an undivided one-tenth of the entire right, title, and interest in, to, and concerning letters patent of the United States number 189,618, and bearing date April 17th, 1877, for an improvement in wash-boards;

And whereas the said John M. Gorham did, by assignment of Joseph H. Lapham, obtain letters patent of the United States for an improvement in wash-boards, which letters patent are numbered 188,472 and bear date March 20th, 1877;

And whereas the said John M. Gorham did obtain reissued letters patent of the United States for an improvement in wash-boards, which reissued letters patent are numbered 9022 and bear date January 6, 1880, the original number being 127,325, and dated May 28th, 1872;

And whereas the said John M. Gorham did obtain certain other letters patent of the United States for an improvement in wash-boards, to wit:

47*e* One numbered 184,611, dated November 25, 1876;
One numbered 183,790, dated October 31st, 1876;
One numbered 190,309, dated May 1st, 1877;
One numbered 223,338, dated January 6th, 1880;

Which said letters patent and the interest of John M. Gorham therein have, as collateral security, been duly assigned by John M. Gorham, first, to Sarah A. Gorham to secure an amount of money owing to her by John M. Gorham and, second, to M. R. Keith, as trustee for Frances A. Gorham, to secure the carrying out the terms of a certain bond of indemnity given by said John M. Gorham to said Myron R. Keith as such trustee:

Now, therefore, in consideration of the sum of one dollar to us paid, and for various other considerations we, the undersigned, do hereby license, empower, give, and grant unto the firm of Gorham & Sargent, composed of John H. Gorham and James T. Sargent, the sole and exclusive right to manufacture and sell in the United

States wash-boards under all said letters patent during the existence of said firm of Gorham & Sargent, but not exce-ding
47*f* the period of five years from August 24, 1881.

SARAH GORHAM.
M. R. KEITH,
Trustee for Frances A. Gorham.
JOHN M. GORHAM.

Recorded Oct 3d, 1881.
Ex'd: H. M. H., E. A. M.

[Endorsed:] 18885. D., '84.

47*g* Liber Z 27, p. 377.

Whereas John M. Gorham, of Cleveland county of Cuyahoga and State of Ohio, did, by assignment of Samuel E. Warren and Daniel M. Fisher, obtain an undivided one-tenth of the entire right, title, and interest in, to, and concerning letters patent of the United States number 189,618, and bearing date April 17th, 1877, for an improvement in wash-boards;

And whereas the said John M. Gorham did, by assignment of Joseph H. Lapham, obtain letters patent of the United States for an improvement in wash-boards, which letters patent are numbered 188,472 and bear date March 20th, 1877;

And whereas the said John M. Gorham did obtain reissued letters patent of the United States for an improvement in wash-boards, which reissued letters patent are numbered 9022 and bear date January 6th, 1880, the original number being 127,325, and dated May 28th, 1872;

And whereas the said John M. Gorham did obtain certain other letters patent of the United States for an improvement in wash-boards, to wit: One numbered 184,611, dated November 25th,
47*h* 1876; one numbered 183,790, dated October 31st, 1876; one numbered 190,309, dated May 1st, 1877; one numbered 223,338, dated January 6th, 1880, which said letters patent and the interest of John M. Gorham therein have, as collateral security, been duly assigned by John M. Gorham, first, to Sarah Gorman to secure an amount of money owing to her by John M. Gorham and, second, to M. R. Keith, as trustee for Frances A. Gorham, to secure the carrying out the terms of a certain bond of indemnity given by said John M. Gorham to said Myron R. Keith as such trustee;

And whereas the said Sarah Gorham, M. R. Keith, trustee for Frances A. Gorham, and John M. Gorham did, on August 24th, 1881, license, empower, give, and grant unto the firm of Gorham & Sargent, composed of John H. Gorham and James T. Sargent, the sole and exclusive right to manufacture and sell in the United States wash-boards under all said letters patent during the existence of said firm of Gorham & Sargent, but not exceeding the period of five years from August 24th, 1881;

And whereas the said John H. Gorham died on the 17th
47*i* day of December, A. D. 1881: Now, therefore, in consideration of the sum of one dollar to us paid, and for various

other considerations, we, the undersigned, do hereby license, empower, give, and grant unto the firm of Gorham & Sargent, composed of the estate of John H. Gorham, deceased, and James T. Sargent, the sole and exclusive right to manufacture and sell in the United States wash-boards under all said letters patent during the existence of said firm of Gorham & Sargent, but not longer than until August 24th, 1886.

Witness our hands this 21st day of December, 1881.

SARAH GORHAM.
M. R. KEITH,
Trustee for Frances A. Gorham.
JOHN M. GORHAM.

Recorded May 4th, 1882.
Ex'd: H. M. H., E. A. M.

[Endorsed:] 18885. D., '84.

47*j* *Defendant's Testimony.*

United States Circuit Court, Eastern District of Pennsylvania.
April Sess., 1883. In Equity.

JAMES T. SARGENT and JOHN H. GORHAM, Administrators, &c.,
vs.
EDWIN K. BURGESS. } No. 24.

Testimony on behalf of defendant, taken pursuant to agreement of counsel, without formal notice, before Samuel Bell, U. S. commissioner and special examiner, at the office of James Parsons, Esq., No. 1430 South Penn Square, Philadelphia, on the 14th day of February, A. D., 1884, commencing at 12 o'clock noon and continuing by adjournment as hereinafter noted.

Present: J. Snowden Bell, Esq., of counsel for complainants; James Parsons, Esq., counsel for defendant.

E. B. STOCKING, a witness produced on behalf of defendant, being duly sworn according to law, deposes and says, in answer to interrogatories propounded by JAMES PARSONS, Esq., counsel for defendant:

Q. 1. Please state your residence and occupation.

A. Washington, D. C.; attorney-at-law and solicitor of patents.

Q. 2. What has been your experience in connection with patents, inventions, and the mechanic arts?

A. For the last ten years I have been exclusively employed in the business of soliciting U. S. and foreign patents, making expert searches, and rendering written opinions as to the scope, validity, and infringement of patents, and for four of said ten years I was a member of the examining corps of the U. S. Patent Office, my duties being to examine applications for patents, both as to form and as to merits, to search for and cite previous patents, publications, &c., as

anticipations of inventions claimed in said applications. My experience thus gained has involved the knowledge of mechanical constructions and equivalents, the rules of practice, and the decisions of the courts and of the Commissioner relating to patents and inventions. My mechanical experience consists in the practical use of machine and hand tools, I having constructed working models and machines, the latter being for the manufacture of bags from a roll of paper.

48 Q. 3. Are you familiar with J. M. Gorham's patent, No. 223,338, for improvement in wash-boards, dated January 6, 1880, a certified copy of which is in evidence, and marked Complainants' Exhibit "Wash-Board."

A. I am.

Q. 4. What do you understand figure one of the drawings in said patent to illustrate?

A. A vertical section of a wash-board with another board, lettered "C," represented as being flat against the part lettered "A" of the wash-board, commonly known as the branding board or, perhaps, more correctly speaking, the face of the board. I observe within the plane of the part C, which is called the protector, two dotted circles, which, from the description of Figs. 2 and 3 of the drawings, I understand to represent a pivot; the curved dotted lines extending from the lower end of the protector upwardly to the parallel dotted lines marked "C" indicate that the part C—that is, the protector—may be swung, turned, or folded upwardly so as to stand at a right angle to the part A, but this is impossible, because, as the lower end is moved to the right and upward, that position of the upper end above the pivot must move to the left and downward. This, however, is impossible, as the solid face or part A prevents such a movement of the upper portion of the protector. I therefore conclude that Fig. 1 illustrates an inoperative device.

Q. 5. What do you understand figure 2 to illustrate?

A. Another inoperative device, because the spring C 1 is mounted snugly upon a rod, shown in cross-section, the centre of said spring—that is, the axial line of said rod—being located a distance from the inner end of the protector "C," and the upper surface of said protector is shown as in close contact with the under surface of the cap piece or crown piece of the board, while the under surface of the protector is in close contact with the upper surface of the spring at a point in a vertical line passing through the axis of the rod. The curved dotted line indicates that the outer end of the protector may be moved downwardly and to the left, so that the protector shall lay flat against the part lettered A, as shown by the parallel lines marked C. This is impossible, because the inner end of the protector must move upwardly and to the right, but is prevented from doing so by the cap piece.

Furthermore, if the outer end of the protector could be moved in the path of the curved dotted line it, the protector, could not occupy the position indicated by the parallel dotted lines marked "C," because, after being so moved, the spring C 1 and the rod shown in section would be between the part A and the protector, and therefore

the portion of the protector near the spring would project above the frame-work of the board. I have constructed a model in accordance with that figure of the drawing and offer the same in evidence to prove my assertion that Fig. 2 of the drawing represents an inoperative construction.

The model referred to offered in evidence and marked Defendant's Exhibit A.

The complainants' "wash-board" offered in evidence and marked Defendant's Exhibit B.

Q. 6. Is the model A made exactly in accordance with Fig. 2?

A. The model is made just as exactly in proportion and relative position of the parts as shown in Fig. 2 as it was and is possible for me to make it.

49 Q. 7. What do you understand the invention of Mr. Gorham to be, and what its object as stated in said patent?

A. Any wash-board protector constructed to bend or yield to pressure and to return to position when said pressure is removed. The protector is to shield the person of the washer from splashing water or suds.

Q. 8. What construction do you understand to be ackowledged by him in said patent to have been used previous to his invention?

A. Protectors broadly, protectors rigidly secured to a wash-board, and protectors attached to the wash-board frame by a joint or pivot and capable of a swinging movement.

Q. 9. Do you consider that the preliminary description of figures 1 and 3 to be correct?

A. I do not. Figure 1 is described as illustrating a wash-board and its protector made according to Gorham's invention. The protector shown in Figure 1 and lettered "C" is not constructed to bend or yield to pressure and to return to position when said pressure is removed. Fig. 3 is described as a front view of the device shown in Fig. 2. This is not correct, because the under surface of the protector lettered C and the bottoms of the side frame are shown; the figure is, more correctly speaking, a front and partial end view of the device shown in Fig. 2, said device being represented as inclined—that is, with its upper end tipped back, the parts having the same relative position as in Fig. 2.

Q. 10. What do you construe claim 1 to be for, and if its subject-matter is illustrated in the drawing indicate in which figure?

Objected to as incompetent, so far as calling for the witness' opinion in a matter of law.

A. I understand claim 1 to be for the combination with any wash-board of any protector which in and of itself is capable of yielding to pressure and of returning to position when said pressure is removed, and I find such a combination illustrated only in one figure of the drawing, namely, Fig. 4.

Q. 11. What do you construe claim two to be for; and, if its subject-matter is illustrated, please indicate in which figure or figures?

Objected to as incompetent, so far as calling for the witness' opinion in a matter of law.

A. I understand claim 2 to be for the combination of three elements, namely, a wash-board, a rigid protector, and a spring, the said combination being limited in that the spring must be interposed between the board and the protector; and I find said combination substantially illustrated in but one figure of the drawing, namely, Fig. 5.

Q. 12. Referring to the description, beginning with line 95, how do you construe the first sentence thereof?

A. To mean that a wash-board protector constructed in accordance with Gorham's invention—that is, a protector capable of yielding to pressure and of returning to position when said pressure is removed—is also capable of being packed flat. The word peculiar I do not understand in its strict sense, because jointed and pivoted protectors are acknowledged in lines from 27 to 30 to have been used prior to the date of Gorham's invention, and because unless the protector has the resilient function it would not be, in the words of the sentence under consideration, "my wash-board."

Q. 13. How do you construe the last sentence of the same clause?

A. To mean that by elastically pivoting the protector below and near the crown piece and between the side pieces of the frame he accomplishes the alleged capability of flat packing. If the construction illustrated by the figures of the drawing mentioned in the sentence under consideration is capable of being packed flat, then the object of specifying the location of the protector, in my opinion, is to insure the final disposition of the protector above the rubbing surface, lettered B, when in a position to be packed. If this be the object then the protector must not only be elastically pivoted below the cap piece, but also near it.

Q. 14. What do you construe the third claim to be for, and in which figure or figures, if any, in the drawing do you find its subject-matter illustrated?

Same objection.

A. I understand claim three to be for the combination of two elements, namely, a wash-board and a protector, the said combination being limited, in that said protection must be located and elastically pivoted below and near to the crown piece or cap piece, and that said protector must be arranged within and limited in length to the distance between the side pieces of the wash-board frame.

Q. 15. How do you construe the word "constructed," in the third claim of said patent?

A. As meaning elastically pivoted, as those words are used in lines 59 and 60 of the description.

Q. 16. Regardless of the state of the art at the time of the grant of said patent to Gorham, namely, January 6, 1880, do you find therein a claim which covers broadly any protector which is capable of folding down upon or into the board for packing purposes?

A. I do not.

Q. 17. Do you find described in the Gorham patent or illustrated in the drawings thereof a protector capable of being folded flat for packing?

A. I do not.

Q. 18. Do you discover any material difference of construction in the Gorham wash-board, in evidence in this case as Exhibit B, from that shown and described in his patent?

A. I do.

Q. 19. Please mention the material points wherein the board as constructed differs from the construction set forth in the patent, stating resulting differences in operation, if there be any.

A. First. All portions of the protector at its inner end which in the patent 223,338 project beyond the pivot have been removed. The protector has been increased in width, so that, strictly speaking, it is not located between the side pieces of the frame, but is extended at each side into the said side pieces in the form of and to constitute rigid non-elastic pivots. These changes in the protector are
51 material, because they render it operative so far as its holding function is concerned. The spring, lettered "C[1]" in the drawing, is coiled with a larger internal diameter or bore than that of the pivot on which the spring is mounted. This is a material difference, in that when mounted on a rod, snugly filling the coils, as shown in Fig. 2, the spring is; in a measure, rendered inoperative.

Finally, I do not find any pivots whatever formed on and as a part of the protector illustrated in the patent, while I do find such a construction in the exhibit. I consider this change material because it is a change from an elastic pivot to a rigid pivot, resulting in a material change in the operation of the protector.

Counsel for defendant offers in evidence certified copy of the model in the Patent Office, marked Defendant's Exhibit "C."

Q. 20. Please explain the operation of the protector, as illustrated by the model marked Defendant's Exhibit "C."

A. The protector in the model is capable and does, under certain conditions, yield to pressue and return to operative position when said pressure is removed; this operation results from a difference in proportion of the parts from that shown in the drawing, in that the inner end of the protector does not completely fill the space between the under surface of the cap piece and the upper surface of the coils of the spring "C." The model also shows matter substantially illustrated in Fig. 3, which is not described in the patent, namely, that the protector is loosely attached to the arms of the spring, which project above the rod and against the lower surface of the protector. The operation of the protector resulting from the construction just described is as follows: When the body of the operator presses against the protector, the upper edge of said protector moves forward and downward, the lower edge of the protector bears against and rides up the inner surface of the cap piece, and so long as said lower edge remains in contact with said surface of the cap piece; when the pressure is removed the protector will return to its normal position; but in case said lower edge of the protector rides above the inner

surface of the cap piece the said lower edge and the protector is forced by the spring over, above, and upon the upper edge of the cap piece and will not return unaided to its normal position. This displacement of the protector will occur when the operator leans upon the same, as in the act of reaching to a distant part of a wash-tub to get articles to bring them to the board in order to wash them.

The same displacement of the protector will occur in its return from a flat position for packing purposes to its normal position for protecting purposes, because the inner edge of the protector is unconfined and carried by a quick action of the spring or springs above, over, and beyond the cap piece. This displacement of the protector is wholly avoided by changing the construction from that illustrated and described in the patent to that of Defendant's Exhibit B. The protector in the patent does not of itself fold, whereas, in Defendant's Exhibit B, the protector itself does fold, an advantage attached to the construction illustrated by the model, Defendant's Exhibit C, which is sacrificed by the construction of the Gorham board, as illustrated in Defendant's Exhibit B. That advantage is this: In riding up and down the inner surface of the cap piece a practically water-tight joint is maintained between the protector and the cap piece, whereas in the board as put upon the mar-
52 ket, Defendant's Exhibit B, the slightest yielding or folding of the protector opens an escape for the suds to pass through and to come in contact with the clothes of the operator as his or her body bears against the protector. The escape for the suds occurs between the inner edge of the protector and the under surface of the cap piece.

Q. 21. In your opinion, as a mechanical expert, would it effect the operation of a coiled spring having projecting arms to mount it snugly upon a rod, as shown in Figure 2?

A. It would. The terminal coil of the spring, when the arms are compressed, would bind upon the arms and neutralize the resiliency of the intermediate coils.

Defendant's counsel offers in evidence patent No. 255,555, dated March 28, 1882, granted to C. H. Williams, and the same is marked Defendant's Exhibit "D."

Q. 22. Are you familiar with the patent No. 255,555, granted to Charles H. Williams for a wash-board?

A. I am.

Q. 23. What do you understand from said patent to be the object of the invention?

A. To provide a broad, rigid, unyielding service, of easy contour, as a support or rest for the body of the operator and a protection from a splashing of the suds against said body.

Q. 24. What do you understand to be its construction and operation?

A. The ordinary cap piece of the board has a rounded exterior surface, its inner surface performing the usual function of all cap-pieces, that of a protector in addition to strengthening the framework. Upon the upper edge of the cap piece is mounted a supple-

mentary protector, there being a tongue and groove joint, which locks the two parts rigidly together; from the ends of the supplemental protector are extended rigid arms, which are slotted and connected to the side pieces of the frame by means of a pin passing through the slot in each arm.

The operation is as follows: Only when the supplemental protector is mounted upon the upper edge of the cap piece does it act as a protector. By bodily removing the protector from the cap piece it may be placed between the side pieces of the frame and standing edgewise therein by the following steps: First, in drawing the protector slightly backward; second, raising the same slightly; third, advancing it to the front, and, fourth, dropping it and placing it edgewise within the frame-work; in which position it is adopted for packing, or is rendered inoperative, so that the board can be used without the supplemental protector if desired.

Q. 25. In your opinion, as a mechanical expert, are there material differences in construction, operation, and advantages in the Williams wash-board over those of the Gorham patent? and, if so, specify them.

A. There are material differences in construction, operation, and advantages:

First. The Williams protector is not yielding; it is rigid.

Second. It is not resilient; it is incapable of returning to an operative position as a protector from a position within the frame of the wash-board.

Third. It is not a pivoted or foldable protector. It occupies a substantially vertical position when acting as a protector, and is not folded to a flat position when not acting as a protector.

53 Fourth. It has no pivots. The arms which are secured to the end of the protector are not the equivalent of pivots formed on the protector itself, because the result produced by such arms is one of two things: the protector would necessarily be swung or carried by said arms over and down upon the rubbing surface of the board; or, the slots in the arms, providing longitudinal movement of the protector bodily, will direct it within the frame-work, and said arms will maintain it therein in an edgewise position.

Fifth. The protector is not elastically pivoted.

Sixth. The arms riding the pins are not the equivalent of pivots, because they are not essential to the maintenance of the protector in an operative position. This result would follow by discarding the pins and slots, thereby allowing the arms to rest at their ends upon the inner surface of the face or branding board.

Seventh. The protector in the Williams board is not located below the cap piece, but upon the cap piece, nor between the side frames, but above them. When located between the side frames it is not a protector.

Eighth. The Williams protector is not constructed to fold down into nor upon the wash-board frame.

The advantages resulting from the changes in construction specified are—

First. A rigid, firm, unyielding support for the body of the operator is provided.

Second. A practically water-tight joint between the cap piece and the protector is provided.

Third. The protector may be dispensed with by placing it within the frame.

Fourth. When placed within the frame it leaves the major part of the receptacle above the rubbing surface unoccupied for the reception of soap.

Fifth. There are no springs, the resiliency or life of which would be destroyed by long-continued compression when the protector is held in a flat position for packing, as would be the case quite often in the trade, especially when heavy stocks of wash-boards are carried for long times by wholesale dealers, the effect of such long-continued compression of the springs being to so impair their resiliency that they fail to bring the protector to an operative position.

By discarding springs Williams avoids this defect.

Q. 26. Specify the material differences of construction set forth in the third claim of the Gorham patent and that of Williams' patent.

A. First. The Williams protector is not located below the crown piece, but upon it.

Second. The Williams protector is not located between the side pieces of the wash-board frame.

Third. Nor is it—that is, the protector—constructed to fold down into or upon said wash-board even with or below the general plane of said wash-board frame.

Fourth. When placed within the frame Williams' protector projects above the frame.

Adjourned to meet Wednesday, February 25th, 1885, at 10.30 o'clock a. m.

54 WEDNESDAY, *February 25th*, 1885.

Met, pursuant to adjournment, at 10.30 o'clock a. m.

Present: Same counsel as before.

Q. 27. What, as a mechanical expert, do you understand by the word "folded," in the eighty-seventh line of the description in the Williams patent?

A. Shifted, as in line forty-three, or closed, as in line forty-six, as those words are therein used. As a mechanical expert, I do not find any construction of the protector, the piece marked F in the drawing, which renders it capable of being folded. The arms, marked E, to which the protector is rigidly secured, are slotted, and a pin, screw, or simple headless nail, as stated in the description, is passed into said slot, and in the first step or act required to shift the protector from the cap piece to a position within the board, as shown in Fig. 2, the said pin, screw, or nail, lettered D, acts as a stop, the end of the slot coming in contact therewith, as stated in lines fifty-one, fifty-two, and fifty-three of the description.

In other words, the pin, screw, or nail instead of acting as a pivot acts in connection with the slotted arms to limit the backward

movement given to the protector in the operation of removing it from the cap piece and in the operation of placing it thereon. If the protector was pivoted or possessed the function of folding it would necessarily occupy a position after being folded which would be substantially at a right angle to the position which it occupies before being folded. When shifted the protector F stands edgewise; it therefore follows that the slotted arms are not the equivalent construction of a pivotal connection of the protector with the wash-board frame, whether said pivotal construction be elastic or not.

As a mechanical expert, I judge the object of using simple headless nails in the slots of the arms E would be to facilitate the absolute separation of the arms and the protector from the wash-board by springing the lower end of one of the arms inwardly—that is, sidewise—to free it from its pin, when the opposite arm could be drawn from its pin, an operation which is prevented by the heads of screws *d*.

Q. 28. Have you a knowledge of the state of the art previous to the granting of the Gorham patent?

A. I have.

Q. 29. What is the first instance, within your knowledge, of a foldable protector combined with a wash-board?

A. Patent of Barnes, No. 8161, June 17th, 1851.

Counsel for defendant offers in evidence certified copy of Barnes patent, and the same is marked Defendant's Exhibit "E," and a duplicate of the model, and the same is marked Defendant's Exhibit "F."

Q. 30. Describe the construction and operation of the Barnes patent, Defendant's Exhibits "E and F."

A. I have compared this model, Defendant's Exhibit "F," with the original model filed in the Patent Office as a part of the application on which the Barnes patent, Exhibit "E," was granted, and I find Exhibit "F" an exact duplicate in size, proportion, manner of joints and connections, and material of said original model.

I find that Barnes connects to an ordinary tub wash-board what he calls an "upper part," consisting of a part lettered B in his drawing, which is equivalent of the ordinary branding board, a part which is the equivalent of the usual cap piece, and these parts are secured to or provided with arms or extensions lettered C, which are pivotally connected to the outer sides of the side pieces of the wash-board, whereby the wash-board is capable of being reversed to bring its rubbing surface lettered A in Fig. 1, or its opposite and smoother rubbing surface, lettered A in Fig. 2, into position for use. Taking the wash-board and its pivotally attached upper part, illustrated in Fig. 2, and bodily reversing the entire apparatus, we will then have the rougher rubbing surface on the upper side of the board, and the part B resting upon the upper end of the rubbing surface and the usual cap piece above it, so that the upper part acts as a protector to prevent the suds from coming in contact with the operator, this protector then being pivoted to the side pieces of the frame by means of the extension or arms C is

capable of being swung and carried by said arms over, below, and against the opposite side of the wash-board proper, and to there occupy a position in a common plane with the wash-board, so as to occupy a minimum of space and of being capable of being packed flat. I consider the mounting or connection of the Barnes protector and of the Williams protector as similar to each other, except that Williams employs slots—that is, that the protector itself in both instances does not fold, but is swung from one position to another.

Q. 31. What is the next instance within your knowledge of a foldable protector?

A. Patent of Epeneter and Grahl, No. 127,325, dated May 28th, 1872.

Counsel for defendant offers in evidence certified copy of said patents, and the same is marked Defendant's Exhibit "G," and also a certified copy or duplicate of the model filed with the application for said patent in the Patent Office, and the same is marked Defendant's Exhibit "H."

Q. 32. Please describe the construction and operation of the Epeneter and Grahl patent, Defendant's Exhibits "G and H."

A. I find in construction an ordinary wash-board frame having a rubbing surface of bristles, and above the rubbing surface, below the cap piece and between the side pieces of the frame, a foldable protector, consisting of a board pivotally mounted on the side pieces, and a flexible oil-cloth apron attached to the foldable protector and provided with hooks for the connection of its upper end with the clothes of the operator, said flexible apron being not essential, and to be omitted if desired, as stated in the description of the patent. The operation is as follows: As set forth in the patent soap is rubbed on the brushes instead of on the clothes; otherwise, the wash-board proper operates as usual. I find no description or illustration which discloses the fact that the protector lettered D is foldable; this fact I ascertain from the model as it is supported below the cap pieces and between the side frame of the wash-board on pivots, and is actually capable of folding down until a portion of the protector comes upon the frame-work. The location of the protector is substantially the same as that indicated in Figs. 2 and 3 of the Gorham patent, and substantially the same as the location specified in the third claim of said patent.

Q. 33. In what respect is the construction limited in said patent?

A. In respect to the distance or extent to which the protector lettered D is foldable. Though not perhaps essential, the flex-
56 ible portion of the protector lettered E is capable of folding into and below the frame-work of the board. The protector lettered D, being wider above the frame-work than at that portion that is above the upper end of the frame-work, is prevented from folding completely within the framework. In order to accomplish this the protector would be required to be made of a uniform width agreeing with its width at its lower part.

Q. 34. As an expert do you think such a change in construction

as you have suggested would be material to adapt the protector of this patent to fold in either direction flat for packing purposes?

A. The change suggested is simple—a change of dimension; the result produced by the change is one of degree only and, therefore, said change is immaterial.

Q. 35. How would the protector lie flat upon the board?

A. By changing the dimension to simply remove the portions which now project above and over the side pieces and the height of the board, so that when turned upwards towards the cap piece the protector would not come in contact with said cap piece; the board would lay flat and in a common plane with the rubbing surface. If the well-known corrugated zinc or wooden rubbing surface was substituted for that of bristles shown, the protector by the same changes would be capable of laying flat upon the board. In the latter case the dimension as to height need not be changed.

Q. 36. What is the next instance of a foldable protector?

A. The patent of J. A. Cole, No. 146,433, January 13th, 1874.

Counsel for defendant offers in evidence a certified copy of said patent and the same is marked Defendant's Exhibit "I," and also a model accompanying the application for said patent in the Patent Office, marked Defendant's Exhibit "K."

Q. 37. Have you compared the model, Defendant's Exhibit "K," with the original in the Patent Office, and how do they correspond?

A. I have compared Exhibit "K" with the original model and find the exhibit an exact duplicate in size, material, manner of joints, and of connections and in operation.

Q. 38. Describe the construction and operation of the wash-board and protector as disclosed in the Cole patent, Defendant's Exhibits "I and K."

A. I find a corrugated metal rubbing surface mounted in side pieces, which are extended above and below the same to form legs so that the board may be used either end up. I also find a cap piece and branding board mounted on arms which are pivoted inside of and between the side frames so as to be capable of being swung from an operative position at one end of the board to a like position at the opposite end of the board. The branding board and cap piece in this wash-board, as in the usual form, serve the function of a protector. The object of the particular construction which I have described is to so construct and arrange the cap piece and branding board as to adapt it, these parts being named in the patent a "pivoted head," to be folded between the legs at either end of the board to occupy little space when it is required to pack the same for transportation or other purposes. The part lettered 2 in the drawing I call the branding board. The part lettered 3 I call the cap piece.

Q. 39. What do they constitute?

57 A. These parts constitute the protector and prevent contact of the suds with the clothing of the operator. In other words, I find in this patent a protector pivotally connected with the wash-board and capable of being packed flat, and in substantially the same plane with the wash-board.

Q. 40. What is the next instance of a folding protector?

A. The patent to Anne Frike, No. 150,315, dated April 28th, 1874.

Counsel for defendant offer in evidence a certified copy of the said patent, and the same is marked Defendant's Exhibit "L," and also a certified copy of the model accompanying the application for said patent in the Patent Office, and the same is marked Defendant's Exhibit "M."

Q. 41. Describe the construction and operation of the wash-board and protector in the Frike patent, Defendant's Exhibits "L and M."

A. This patent shows a wash-board with a rubbing surface on opposite sides thereof and between the usual side frames or pieces, the rubbing surfaces being indicated in the drawing by the letters B D and the side pieces being lettered E. Above the rubbing surfaces and between the side pieces and pivotally mounted therein is a part, F, surmounted by boards H.

The object of the invention is stated to be to provide a double wash-board, either side of which may be used with equal comfort. Among the advantages mentioned in the description is that a broad surface is presented to support the body of the operator, and his or her clothes are protected from being dampened or soiled.

The operation is as follows: When in use the body of the operator rests against the boards H, they being in about the position indicated in Fig. 2 of the drawing, the board therefore serving in this respect as a support as well as the like function of an ordinary cap piece. One surface of the pivoted part F is at an angle to the plane of the rubbing surface and acts as a protector to prevent the splashing of the suds over the upper end of the rubbing surface and against the clothes of the operator, the same function being performed also by the projecting part of the board H adjacent to said surface of the part F, so that the part F alone or it in connection with the board H are in function, operation, and construction a protector located below the cap piece, or its equivalent, and between the side pieces of the frame-work of the board, and by reason of the part F being pivoted, the protector—that is, the surface of the part F, above specified—is capable of being folded on its pivots, lettered *a* in the drawing, down into, even with, or below the general plane of the wash-board frame, as stated in the third claim of the Gorham patent, and that part of the board H which supplements the protecting function of the part F is also capable of being swung down upon said wash-board frame.

I have described the operation and function of the parts with relation to one of the rubbing surfaces, their operation and functions being exactly the same with relation to the other rubbing surface.

Q. 42. Do you find in the Frike and in the Cole patents a protector located below the cap piece and between the side frames of of the board, which protector is capable of folding down upon or within the board for packing purposes?

A. I find in the Frike patent a protector capable of being folded down into the frame-work, carrying a part which is capable

58 of being swung down upon the frame-work. The protector, which is capable of being folded as above stated, is the part lettered F; the protector which swings is the part lettered H. In the Cole patent, the protector, consisting of the branding board 2 and cap piece 3, is capable of swinging into a common plane with the wash-board for packing purposes. The folding and swinging operations of the two parts or surfaces which constitute the entire protector in the Frike patent, when folded and swung down into and upon the frame-work of the board adapts the same to be packed flatly with others, the legs or bottom portion of the side pieces of the next board in the package of several boards being placed against the protecting surface of the board H, while the like board H of the said second wash-board occupies a similar relative position with the feet or legs of the first board, so that a package of two boards or any multiple of two boards is compact and substantially rectangular.

Q. 43. In view of the state of the art as given in your previous answers, how do you, as a mechanical expert, understand the third claim of the Gorham patent?

A. I understand it to be for an alleged combination with any wash-board of any protector, such as, for example, that shown in Epeneter patent and lettered D, or that shown in the Frike patent, lettered F, and located below the place of the cap piece as in said Frike patent, or below the cap piece itself as in said Epeneter patent, and between the side pieces of the wash-board frame as in the said Epeneter, the said Frike and the Cole patents, the models of which being indicated in the record by the letters H, M, and K, respectively, and constructed substantially as shown in said Gorham's patent—that is to say, either being a protector made of resilient material or mounted upon or attached to a coupler of such material, which said coupler is the sole and direct means of connection between the board and protector. In other words, Barnes' Exhibit "F" shows a protector capable of being packed flat. Epeneter's Exhibit "H" shows a protector pivotally located, as specified in said Gorham's third claim. Cole's Exhibit "K" shows substantially Barnes' construction, but arranged inside of instead of outside of the side pieces of the frame-work, while Frike's Exhibit "M" shows a protector lettered F, located exactly as specified in said third claim and constructed to fold down into, even with, upon, or below the frame-work of the board.

I consider the Frike patent as possessing every element, condition, feature of construction, and function specified in the third claim of Gorham's patent. Therefore, in view of the state of the art, I understand the third claim of the Gorham patent to be for the combination with a wash-board of an elastically pivoted protector located below the cap piece and between the side pieces of the frame-work of the board.

Counsel for defendant offers in evidence the patent of W. N. Stevens, No. 222,846, dated December 23d, 1879, and the same is marked Defendant's Exhibit "N."

Q. 44. What, then, in view of the state of the art, is the limitation

which you, as a mechanical expert, would put upon the broad statement contained in Gorham's third claim?

59 A. In view of the patents and exhibits mentioned in my previous answers and in view of Exhibit "N," which shows a protector consisting of a wire frame having an apron, said frame being adapted to be attached to a wash-tub for the purpose of protecting the washer, said frame, when in operative position, being arranged at the upper end of and above the wash-board, serves, in the words of the description, "as a rest against which the operator may rest his or her body during the performance of the work;" and said frame, being made of wire, would necessarily yield more or less to pressure and return to position when said pressure is removed; therefore, as a mechanical expert, and in view of the state of art, I am forced to include as a part of claim three some novel feature, all therein specifically named being old, and the only novel feature disclosed in the whole patent to me being what is termed an elastic pivot. I therefore limit said claim by including said novel feature as it is included in the first and second claims in said patent in specific terms.

Q. 45. Do you find the construction set forth in said claim construed, in view of the state of the art, to be an equivalent of the construction in the Williams wash-board, Complainants' Exhibit "Wash-Board?"

A. I do not, because the constructions differ in fact, operations, results produced, and advantages secured; the differences of construction in fact are as follows: Complainants' Exhibit "Wash-Board" has a protector which as such is not located below the crown piece nor between the side pieces of the frame-work; it is not yielding; it is not elastically pivoted; it is not constructed to fold at all in any direction upon or into, even with or below the frame-work. In operation, as shown by Exhibit "C," the protector yields when the operator presses against it when using the board, and in yielding its inner edge moves along the under surface of the cap piece. When in use as a protector the Complainants' Exhibit "Wash-Board" protector has no movement whatever, either bodily or at an edge thereof, along the cap piece, as in Exhibit "C."

In Exhibit "C" the protector may be swung down within the frame-work of the board by compressing the arms of the springs to the ends of which the protector is loosely connected, so that instead of folding down, which the protector would do were it pivoted at its lower or inner edge to the frame-work, *if* the protector as it is swung down advances or is moved bodily downward and away from the cap piece—an operation which would be impossible were it and simply and strictly a folded protector.

In my opinion as a mechanical expert, the object of having the protector, in the words of the description, "elastically pivoted" is to insure contact of the inner edge of the protector with the under surface of the cap piece to prevent the escape of suds between these parts. The advantages of Complainants' Exhibit "Wash-Board" over a wash-board constructed in accordance with the claim under consideration are as follows: No springs are employed; a rigid sup-

port is provided; the function of the protector as such is in no manner affected by an arrangement of the protector in a position for packing purposes, no matter how long that arrangement is continued, the same protector being capable of being thrown out of use if desired without materially obstructing the soap pocket of the board proper; and, finally, the cost of manufacture, in my opinion, is materially less than that of Exhibit "C."

Counsel for defendant offers in evidence certified copy of
60 the file wrapper and contents in the grant of the Gorham patent, and the same is marked Defendants' Exhibit "O."

Q. 46. Have you any further facts than those stated in your previous answers which corroborate your statement to the effect that Gorham's patent has no claim covering any protector which is capable of being folded flat for packing purposes?

A. I have, as I find that he originally claimed broadly such protectors to be of his invention. In his application, as originally filed, he made the following statement: "My invention relates to wash-boards, and more particularly to wash-board frames, and it consists broadly, in the combinations with a wash-board frame of any con-construction, of a swinging, turning, or movable, or yielding protector for preventing water and suds from splashing upon the operator. C is a movable or yielding plate or protector pivoted, journaled, hinged, or in any manner movably attached to the frame A, or to any suitable part of the wash-board whatever." In his original third claim he specifies the combination with a wash-board of a protector adapted to swing upon said wash-board. Before said application was acted upon by the office he introduced, by amendment, December 16th, 1878, the following additional claim: "Fourth, a wash-board provided with a splash plate or protector, C, or its equivalent, said plate or protector adapted without detachment from the wash-board to which it is fixed to be moved, turned, or folded out of its normally operative position, for purpose of economy of space in packing and shipment, substantially as shown."

All of the claims were rejected on the Epeneter patent, Defendant's Exhibit "G," and the Frike patent, Defendant's Exhibit "L."

Subsequently, by amendments B, C, D, December 30th, 1878, he submitted, among other claims, the following: "First, the combination with a wash-board of a protector loosely secured thereto, the same being constructed and adapted so that when not in use it may be folded parallel against the wash-board, substantially as set forth," and other claims of like import, which were by the office again rejected on the Epeneter patent, Defendant's Exhibit "G."

Gorham erased his original specification and substituted a new one with new claims, one of which was as follows: "Two, the combination with a wash-board of a protector loosely or movably secured thereto, the same being so constructed that when not in use it may be folded bodily against the wash-board, substantially as shown." And other claims of like import were also made in the same amendment, namely, of January 8th, 1879, the claim above quoted was

rejected in office letter of January 14th, 1879, on the Epeneter patent. The entire specification and claims were again cancelled by amendment F, March 17th, 1879, and these again cancelled by amendment G of April 16th, 1879, and this cancelled again by amendment H, July 17th, 1879, which consisted of substantially the description of the patent as granted.

The third claim appears to have been rejected by the examiner in office letter of July 22d, 1879, on the Epeneter patent, Defendant's Exhibit "G," and in office letter of September 8th, 1879, the first and third claims (the latter being the third claim) of the patent were again and finally rejected on the references theretofore cited, and in office letter of October 29, 1879, the Barnes patent, Defendant's Exhibit "E," was cited as an additional reference against the first claim, which was, by amendment I, December 13th, 1879, amended to read as in the patent.

61 From this record of the application in the Patent Office I find that Gorham relinquished all claim for a protector "pivoted, journaled, hinged, or in any manner movably attached to the frame, or to any suitable part of the wash-board whatever," and accepted of a claim containing limitations as to the location and the construction of his wash-board and protector, and therefore I understand these limitations to be absolutely material in the matter of constructing a wash-board and protector in accordance with the third claim of the Gorham patent.

Adjourned to meet Thursday, February 26th, 1885, at 10.30 o'clock a. m.

THURSDAY, *February 26th*, 1885.

Met, pursuant to adjournment, at 10.30 o'clock a. m.

Present: Same counsel as before.

Q. 47. Do you, as a mechanical expert, consider the limitations of claim 3 in the Gorham patent of material importance?

A. I do. If requested to construct a wash-board and protector in accordance with said claim and in accordance with the said patent, No. 223,338, I should construct the protector of uniform width, and just wide enough to reach from the inner surfaces of one of the side pieces of the frame-work to the other, and of such length or dimension from its inner to its outer edge as would be less than the distance from the under surface of the cap piece to the partition or cross-bar at the upper end of the rubbing surface. Such protector I would, in following the direction in the claim, construct substantially as shown in the word of the claim—"fold" down into or upon the wash-board frame. In referring to the description and drawing, especially Figs. 2 and 3 of the latter to learn what that construction would be, I would elastically pivot said protector in one or two ways—by a spring coupler, C^1, Fig. 5, which must, in order to prevent the escape of suds between the board A and the lower edge of the protector, be in sheet-like form and extended from one side piece of the frame to the other, or by mounting the protector on the arms of coiled springs which are mounted upon a rod, the ends of which

are seated in the side pieces of the frame, the said coiled springs having other arms which bear upon the board A.

In the case of using a spring coupler, as just described, I would be following the directions of the patent as I understand them, but in my opinion such a construction would not be practically capable of being folded down into or upon the wash-board, and also capable of returning to a position at a right angle to the board by reason of the resiliency of the coupler, and in the case of the use of the coiled springs, as above stated, I should be compelled to arrange the protector, the rod, and the springs at a greater distance below the cap piece than that shown in the drawing.

I should thus strictly follow the course above stated lest I should construct a board and protector which would be substantially such as is shown in the Frike patent or in the Epeneter patent, Defendant's Exhibits "L" and "G," respectively.

Counsel for defendant offers in evidence an agreed copy of the patent granted to J. M. Gorham, No. 285,254, dated September 18th, 1883, and the same is marked Defendant's Exhibit "P."

62 Q. 48. Do you, as a mechanical expert, find in any of the exhibits, patents, or models any disclosure of the construction of the protector and board as illustrated in Defendant's Exhibit "D."

A. I find the exact construction of the protector in Exhibit "B" in the Gorham patent, Defendant's Exhibit "P," and I fail to find the construction of said protector in any other of said defendant's exhibits, and I also fail to find the construction of said protector in Gorham's patent, No. 223,338. In the Gorham patent, Defendant's Exhibit "P," I find the protector of Defendant's Exhibit "B" lettered C in the drawing, having trunnions or pivots, lettered c^2, which project beyond the sides of the projector so as to be capable of being journaled or mounted within the side pieces of the frame. About these pivots I find coiled springs, one end of which, lettered c^1, bears against the protector or is connected therewith, the other end of which spring is connected with or bears against, in the Defendant's Exhibit "B," the frame-work, a part of which is fixed in relation to the protector, while in the patent, Defendant's Exhibit "P," said end of said spring bears against a holding strip lettered c^1, which is fixed with relation to the protector.

The patent discloses certain devices and constructions whereby the strip c^1 is removably secured to the wash-board; this I consider unessential, so far as the question which I am answering is concerned. In other words, I find in all substantial features of construction and operation the protector of Defendant's Exhibit "B" in the patent granted to Gorham in 1883, Defendant's Exhibit "P."

Q. 49. Is the operation of the wash-board affected by the presence or absence of the protector?

A. In my opinion, the operation of the wash-board, as such, the performance of all its functions as a wash-board, and the result produced by its use as a wash-board, are not in the least affected by the presence or absence of any protector.

I am not aware of any legitimate effective mechanical co-operation existing between the protector, as such, and the wash-board, as such. I readily concede that a different article is produced by providing a wash-board with a protector, but I do not understand that the provision or the lack of provision of a protector affects the operation of the wash-board as such.

Cross-examination by J. SNOWDEN BELL, Esq., of counsel for complainants:

X Q. 50. Have you received a technical education or undergone a practical experience in any branch of the mechanical arts; and, if yea, what was the nature and extent thereof?

A. I have taken no technical mechanical course of instruction. My practical experience includes the use, personally, of hand tools for working in wood and in metal and the use of similar machine tools, such as lathes, planers, drills, &c. The extent of such experience covers a period of twenty years, with an intermission of a period of from three to five years, when I was in the military service and when I was attending law school at Albany, New York, and otherwise engaged.

The time devoted within the above period to mechanical pursuits has been entirely during leisure hours and when not engaged in my regular profession—that is to say, my mechanical experience is that of an amateur and has resulted in the construction of practical working models and machinery.

63 X Q 51. The experience referred to in your last answer does not, then, include apprenticeship to any mechanic art nor business employment as a practical or operative mechanic? Is this the fact?

A. The experience given includes the process of learning the use of tools, but not as an apprentice as understood in the trade, nor have I ever been a regular mechanical employé as understood in the trade.

X Q. 52. Are you possessed of any special knowledge or peculiar skill or ability in the construction of wash-boards; and, if yea, how was the same acquired?

A. As I understand the question, the word "peculiar," as is understood by me, means skill possessed by me and by none others. Such skill I do not possess. I have marked special, natural, and acquired mechanical skill and experience which enables me to very quickly perceive and understand the construction and operation of articles, mechanical devices, and machines in very many arts, including what I consider an exceedingly simple art, namely, that of the construction and operation of wash-boards.

X Q. 53. As you seemingly misapprehend my last question I repeat it, substituting the word "special" for "peculiar" and supplementing it by the explanation that the knowledge, skill, or ability inquired about is limited to the construction of wash-boards and to such as may have been derived from a practical knowledge or experience in that art.

A. I now understand the question to be, "Are you possessed of

any special knowledge or special skill or ability in the construction of wash-boards; and, if yea, how was the same acquired?" I answer I am possessed of special knowledge of the construction of wash-boards, said knowledge having been acquired by habits of observation exercised since boyhood, having at that period seen and used wash-boards, and more recently by an expert special search at the United States Patent Office for and the examination of all United States and foreign patents on wash-boards. I have also a special ability of a mechanical nature to construct wash-boards with more or less skill, said ability having been acquired by my experience in the use of hand and machine tools.

X Q. 54. Have you ever had any practical experience as a constructor of wash-boards; and, if yea, to what extent?

A. I have never been engaged as a manufacturer of wash-boards.

X Q. 55. Then, I understand that your knowledge, skill, and ability in the art of wash-board construction is similarly to the remainder of your mechanical experience as stated in your answer to X Q 52, "that of an amateur?" Am I correct?

A. You are incorrect, as I understand the question. It refers to the art of wash-board construction broadly, and not to the act of constructing wash-boards. My knowledge of the art broadly is that of an expert, while my practical mechanical ability is that of an amateur rather than as a tradesman.

X Q. 56. Does the knowledge of the art of wash-board construction, which in your last preceding answer you said you possessed and also say is that of an expert, extend further than to such knowledge of patents and other documents relating to that subject as you may have been able to acquire in the practice of your duties as a member of the examining corps of the United States Patent Office and as a solicitor of patents?

64 A. It extends further, so as to include observation of the different forms of wash-board on the market whenever they have been brought to my attention.

X Q. 57. Can you indicate generally the extent of the observation to which you refer or the proportion of your time that you have devoted to it?

A. I have devoted no special time or endeavor to observe the different forms of wash-board on the market, but from a force of habit I closely observe new things as they appear on the market, and as I am casually brought to see them.

X Q. 58. What, if any, knowledge of the state of the art of wash-board construction did you possess at the date of Gorham's patent, No. 223,338, to wit, January 6th, 1880?

A. About three months previous to that date I resigned my position as a member of the examining corps of the United States Patent Office, which I had held continuously for four years. In my duties as an assistant examiner in the examination of applications for patents it very frequently happened that I was obliged to go into the several other divisions of the Patent Office from that in which I was serving, namely, printing-paper manufactures and book-binding, to find references, and I have many times made such searches in the

division of laundries, which includes the subdivision of wash-boards. At such times I became familiar with the state of the art of wash-board construction as disclosed in all United States patents granted previous to November, 1879, and as disclosed in foreign patents, so far as copies of the same were in the possession of the Patent Office.

I also had previously to the date mentioned a general knowledge of the construction of wash-boards, as I had up to that date seen them on the market.

X Q. 59. Do you consider that Defendant's Exhibit "C," model of Gorham's application, illustrates an inoperative device?

A. Under certain conditions of use, which conditions would occur in an ordinary use, said model illustrates an inoperative device. By reason of material differences in the proportion and relative position of the parts from the same, as shown in the patent, Complainants' Exhibit "Gorham Patent," the model illustrates a device which is operative conditionally—that is to say, so long as in use the pressure of the body of the operator or user is limited to such an extent as shall not cause the inner edge of the protector to pass out of contact with the portion of the under surface of the cap piece of the board, which is at least the thickness of the inner edge of the protector below the upper edge of the cap piece, said protector will by the springs be carried back to its normal position when the pressure of the body of the operator is removed.

But if the body of the operator presses the protector forward and downward to a greater extent than above specified the inner edge of the protector will, when the pressure of the body of the operator is removed from the protector, either remain in contact with the extreme upper portion of the under surface of the cap piece or said inner edge of the protector will be forced by the springs on top of, over, or beyond the upper edge of the cap piece, and thus fail to return to operative position.

The model under consideration illustrates a practically inoperative device in another respect, namely, that no means or re-
65 taining device is provided whereby it may be held in a flat position for packing purposes. I also consider the model as illustrating an inoperative device which, strictly speaking, is not capable of folding or constructed to fold. I consider it an essential feature of construction in all folding devices that they be confined in some manner to a centre of motion at their pivotal point, as a door is confined at its pivotal point or hinge line. Taking this view of the matter of a folding function, I find that when the protector of the model, Exhibit "C," is pressed down completely within the frame-work of the board its inner edge is carried forward—that is, downward away from the cap piece. This would not be the case were the protector pivoted in line with its inner edge when at a right angle to the board, said pivots being mounted in the side pieces. Such a pivoting of the protector would destroy the function which it now possesses of keeping its inner edge in contact with the under surface of the cap piece when not excesssively depressed, whereby a practically water-tight joint or connection is maintained between the protector and the cap piece to prevent the escape of

suds against the clothes of the operator, said escape being through or between the protector and the cap piece.

I also consider the model illustrative of an inoperative device in another respect, namely, that long-continued complete depression of the protector within the frame-work will practically destroy the resiliency of the springs, so that they will fail to return the protector to an operative position, and to maintain its free inner edge in contact with the cap piece.

(Answer objected to as not responsive, the question having no reference to the Gorham patent, but to the model pure and simple.)

X Q. 60. Irrespective of its resemblance to or difference from the Gorham patent or any other patent, is it your opinion that the model, Defendant's Exhibit "C," illustrates an inoperative device?

A. My answer is the same as my preceding answer, except the reference therein to Gorham patent.

X Q. 61. If the question is susceptible of a specific answer, I will be glad if you will give one; or, if you are unable to do so, please so state.

A. I understand this question as a request for an answer consisting of the word yes or no. The model, Exhibit "C," does not illustrate a device which is wholly, practically, and positively operative for its designed purpose.

X Q. 62. You have stated several times, in the course of your answer to cross-question 59, that the model, Defendant's Exhibit "C," illustrates an "inoperative device." You have also stated, in the same answer, that said model illustrates a device which which is "operative conditionally." Am I to understand that an "inoperative device" and a device which is "operative conditionally" are, in your view, synonymous?

A. As I understand the question, it calls for an explanation of my statements in regard to model, Defendant's Exhibit "C," that it illustrates an inoperative device and conditionally an operative device. My experience in patent matters and my knowledge of the rules and decisions applicable to the same compel me to take the position that any device which may by chance operate and that any device which, under the usual conditions of a practical use
66 thereof, may and positively would fail to perform its functions, must be held to be not wholly, practically, and completely operative.

The conditions under which a device constructed in accordance with the model, Defendant's Exhibit "C," would absolutely fail to perform its function of returning to operative position are—

First. When the protector is excessively depressed by the contact therewith of the body of the operator in the act of reaching for clothes in the distant part of a deep wash-tub. This excessive depression would carry the inner edge of the protector above the cap piece, and upon the return of the body of the operator to a working position the protector would fail to return to operative position, but would by the springs be forced over and in contact with the upper edge of the cap piece.

Second. The excessively long, complete depression of the protector within the frame while the boards are packed for storage and transportation, as specified in my previous answers, would also render the protector positively inoperative.

Therefore, I consider myself correct in saying that the model, Defendant's Exhibit "C," illustrates an inoperative device.

X Q. 63. You have failed to apprehend the scope of X Q. 62, which inquires only as to the equivalency or non-equivalency of two phrases employed by you, and has no reference to the application of such phrases or either of them to Defendant's Exhibit "C" nor any other device. Please state whether or not, in your opinion, a device which is "operative conditionally" is an "inoperative device."

A. In patent law and strictly speaking a device which is operative conditionally is an inoperative device, because its operativeness is a matter of chance.

X Q. 64. I understand from your answer in 20 in chief that model, Defendant's Exhibit "C," which you supposed to illustrate a device which is "conditionally operative," and whose operation, as you understand it, you have described in said answer, differs only in "proportions of the parts from that shown in the drawings" of the Gorham patent, 223,338; am I correct?

A. My answer referred to will fail to disclose any supposition on my part, and although I mentioned a difference in proportion and relative position of the parts of the model, Defendants Exhibit "C," from the relative position and proportion of certain parts as illustrated in the drawing of Complainants' Exhibit "Gorham Patent," I intentionally avoided any statement that said model was in any sense a part of said patent and any statement that the construction illustrated in the drawing of said patent was conditionally inoperative.

I therefore think that the construction put upon my answer to 20 is incorrect.

(Objected to as not responsive.)

X Q. 65. In what, if in any, particular other than that of "proportion of the parts," does the construction illustrated in model, Defendant's Exhibit "C," differ from that illustrated in Figs. 1, 2, and 3 of Complainants' Exhibit "Gorham's Patent?"

A. In several material respects:

First. In the model I do not find a pivot within the plane of the protector and below its upper or inner edge, as clearly indicated in Fig. 1.

67 Second. In the model there is proportionately twice the distance between the cap piece and the springs for the reception of the inner edge of the protector that there is in Fig. 2.

Third. In Fig. 1 of the drawing a construction is indicated which permits of the disposition of the protector flatly against the part A of the wash-board. In the model such a disposition of the protector is impossible by reason of the manner and means of connecting the protector with the board.

Fourth. In the figures specified in the question, and in all de-

scription thereof in the patent, no means or devices or manner of attachment of the protector to the spring is found, whereas in the model the protector is positively connected to the outer ends of the arms of the springs.

Fifth. Fig. 2 indicates by dotted lines that the protector may be laid flat against the part A, whereas in the model this is impossible.

X Q. 66. Passing for the moment your fourth specification of differences, is not each and every one of the others you have named simply and solely a result of differences of proportion of parts between the model and the drawing?

A. No; my first point of difference is an absolute change of location of a part, which of itself would render the device inoperative. My second point is also a matter of location, in that the protector springs and rods are located further away from the cap piece, resulting in rendering an inoperative construction in a measure operative. My third point of difference involves more than a change of proportion, namely, a change of location of the pivots from within the plane of the protector and below its upper edge to a position at the side of the protector. My fifth point of difference is not a change of proportion, but the impossibility pointed out results from the relative location of the parts, namely, the board A, the spring C^1, the rod shown in section, and the protector C, the spring and rod being located bodily between the protector and the board A, when the protector is moved parallel with the board.

X Q. 67. Is the pivot which you supposed to be clearly indicated in Fig. 1 marked by any letter of reference? If so, please specify such letter or otherwise describe the part which you suppose is the pivot.

A. I consider the description of this patent defective in that it fails by letter of reference and proper description to describe several of the parts illustrated, among which is the pivot of the protector as shown in Fig. 1. Reasoning from analogy, I take the part C^1 in Figs. 2 and 3 and the rod shown in front elevation in Fig. 3 and in section in Fig. 2 to be a sufficient warrant for reading the two dotted circles substantially in the place of the protector C and to be the pivot thereof, as shown in Fig. 1.

X Q. 68. Do you not think that it would be perfectly clear to a skilled mechanic, who examined the drawings with a view to inform himself as to the construction, and not for purposes of adverse criticism, that the two dotted circles to which you have referred represent the end of one of the springs, and that by an obvious error of the draughtsman the protector was shown as abutting closely against the board A, instead of being separated therefrom at top by a distance equal to the diameter of the spring coil, as Figs. 2 and 3 would indicate?

A. As I understand the question, I am prohibited from so
68 reading the drawing—that is, as an error of the draughtsman—because this figure is described in lines 51, 52, and 53 as representing the protector as laid down upon the face of the board; again, in line 96, as the flat manner in which it can be packed, and

as specified in the third claim as being upon said wash-board even with or below the plane of the wash-board frame.

Now, as in the construction shown in Figs. 2 and 3, and as acknowledged in the question, it would be impossible to lay the protector flat against the face as shown in Fig. 1, it necessarily follows that if so laid there must be a change in the location of the pivot.

Even if I read the two dotted circles as representing the spring, the natural inference follows that the rod also is there as the pivot, as it is present in Figs. 2 and 3.

Now, in regard to what a skilled mechanic would follow in constructing a device in accordance with the drawing, he might follow Fig. 2, or he might, so far as the location of the pivot only is concerned—that is, without regard to the operativeness of the device—locate the pivot and the spring at the point indicated by the dotted circles in Fig. 1. In fact, in Defendant's Exhibit "B" the pivots and springs are located within the plane of the protector, but not a distance from its upper end as shown in Fig. 1—that is to say, a skilled mechanic could readily locate the pivots within the plane of the protector, but undoubtedly would locate them at its upper or inner edge.

Adjourned to meet Friday, February 27th, 1885, at 9.30 o'clock a. m.

FRIDAY, *February 27th*, 1885.

Met, pursuant to adjournment, at 9.30 o'clock a m.

Present: Same counsel as before.

X Q. 69. Referring to your second point of difference stated in answer to X Q. 65, is it not the fact, in view of the small scale on which Fig. 2 is made, that the difference in distance from the cap piece to the springs between said figure and model, Defendant's Exhibit "C," is so small that it would not be apparent except by very close and accurate measurement?

A. I consider the question as involving in its answer the technical skill of a draughtsman, and though not a professional draughtsman myself I am an amateur draughtsman. I always used the word in its strict meaning—that is, a person who becomes skilled in an art for a liking or attachment to it as a matter of taste, though not professionally engaged in it. I never use the word in any other sense.

I consider the parts mentioned in the question as being represented in Fig. 2 as snugly in contact with each other, no space whatever being shown between them. To show such a space between the protector and the cap piece a line or lines at right angles to the cap piece should appear between the lower line of the protector and the spring, said lines to represent the continuance of the side piece as it is represented below the spring.

I consider the difference in distance between the springs and the cap piece in the model and in the drawing as perfectly apparent upon a first and even casual comparison. I will add that a
69 draughtsman of ordinary ability would have provided in Fig. 2 the lines above specified to show a space between the

spring and the protector unoccupied by the protector, with the model before him and without any measurement whatever except by the eye.

X Q. 70. Will you please make upon the record a sketch of the upper portion of Fig. 2, as nearly as possible to the scale of Fig. 2, showing the line or lines which in your last answer you say should appear between the protector and spring, and state, as nearly as you can, what would be the length of the outer of said lines in a figure of the scale of Fig. 2?

A. I have made a sketch as requested, and in order to make it as nearly as possible (not having any draughting instruments with me) to the scale of Fig. 2, I have traced the upper part of said figure by holding it against the window pane, with the sheet upon which my sketch appears placed against it, and both held in position by my left hand while I drew the sketch or tracing with my right, an uncomfortable and difficult position in which to do the work. I have altered the proportionate thickness of the protector with relation to the thickness of the cap piece to more nearly agree with the model than does Fig. 2. I am compelled to either follow the model or actually change the scale and proportion of Fig. 2 of the drawing, which I am requested to adhere to as nearly as possible—that is, I cannot show a space between the spring and the protector without either showing the protector as being thinner or bodily moving the spring further from the cap piece than as shown in Fig. 2. I prefer to follow the model, which necessitates a change of scale or proportion only in the thickness of the protector. I also follow the model in showing the upper end of the arm of the spring as inclined upwardly against the protector, and I indicate the lines mentioned in my preceding answer by the letter X, these lines being shade lines at a right angle to the cap piece and representing the inner surface of the side frame. The upper line, the measurement of which is requested in the question, I indicate by the letter Y, and in the scale of Fig. 2. It being near the point of actual contact of the inclined arm of the spring with the lower horizontal line of the protector, which I have lettered C, is but a mere point, and represents the extreme right hand edge of the side piece of the frame, being a continuance of that edge of the frame as it appears below the spring where I have indicated it by the letter Z.

This upper line Y is absolutely non-essential in order to show a space between the spring and the protector, and the lines X are not absolutely required; any inclination of the spring of the arm as it actually exists in the model would, if represented in Fig. 2, necessarily involve the illustration of a space between the spring and the protector.

The sketch referred to is identified by being marked by the witness with his initials, and is inserted by the examiner in the record as a part thereof.

X Q. 71. Do I correctly understand you that the slight modification indicated in and by sketch E. B. S. would suffice to remove

the objection to the correctness of Fig. 2 specified in clause second of your answer to X Q. 65?

A. Sketch E. B. S. does not show a slight modification; it shows a material, positive, essential change of construction and relative position.

(Objected to as not responsive.)

X Q. 72. Irrespective of your opinion as to the extent or
70 importance of the modification indicated by sketch E. B. S., I ask you whether such modification or change, as you may be pleased to term it, would suffice to remove the objection to the correctness of Fig. 2 specified in clause second of your answer to X Q. 65.

A. Clause second of my answer to X Q. 65 does not assume or was not given as being a correction of Fig. 2 of the drawing; said figure and the model, Defendant's Exhibit "C," were being compared by me, and clause second mentioned one of the differences existing between the drawing and the model. The public does not know, nor do I know, whether the draughtsman who made Fig. 2 made it from the model or not. I have no right or authority to state that Fig. 2 is incorrect or at variance with the ideas and wishes of the inventor. I assume that it was satisfactory to the inventor and his attorney, else it probably would not have been issued as a part of his patent.

(Same objection.)

X Q. 73. If Fig. 2 were so modified as to accord substantially with sketch E. B. S. would in such case the differences between the drawing of patent 223,338 and model, Defendant's Exhibit "C," specified in clause second of X A. 65 cease to exist?

A. The word modified and the word modification each has a technical meaning in patent matters; it means immaterial changes. Taking this meaning of the word strictly in view, the sketch E. B. S. shows more than a modification of Fig. 2 of the drawing. When the material changes illustrated in sketch E. B. S. are made in Fig. 2 of the drawing the difference mentioned in the second clause of my answer to X Q. 65 is substantially obliterated.

X Q. 74. Referring to the third clause of X A. 65, is not the difference therein specified merely a result of the difference specified in clause second, and if Fig. 2 were modified or changed, as you may please to term it, as stated in X Q. 73, would not the difference specified in clause third be likewise obliterated?

A. The difference specified in said third clause is not a result of the difference specified in said second clause, and the changes of construction and relative location of the parts, as shown in sketch E. B. S., would not obliterate the difference specified in said third clause.

The inoperativeness of Fig. 1 arises from a material variation in the location of the pivot of the protector from that shown in Fig. 2 and from that shown in sketch E. B. S.—that is to say, the inoperativeness in Figs. 1 and 2 arises from different causes in each case.

X Q. 75. The difference specified in clause third is a result of the difference specified in clause first, is it not?

A. No, sir; not entirely. The difference specified in clause one refers to one part of Fig. 1 and the difference specified in clause three refers to another part of Fig. 1.

Clause one refers to the location of the pivot; clause three refers to the dotted lines. Locating the pivot, as shown in Fig. 1, alone—that is, of itself—would not necessarily render said figure an illustration of an inoperative device, provided that all portions of the protector above the pivot were removed, a provision not appearing in any form in the patent.

71 The operation indicated by the dotted lines to which clause third refers is impossible in the model, for the reason stated in said clause. I therefore believe that it is unnecessary even to qualify a negative answer to the question.

X Q. 76. Referring to the fourth clause of X A 65, is it not the fact that Fig. 3 plainly shows upon the lower side of the protector two circles sufficient to represent the heads of screws or pins connecting the springs to the protector, substantially as in the model?

A. I have expended considerable time in the examination of the drawing and of the description to find authority for giving a name and function to the two circles referred to in the question. By reference to Fig. 2, I am forced to read those circles as being not out of the plane of the spring arms, at the end of which they appear in Fig. 3. If the circles were intended to represent screws, a coil of the arm would be shown in dotted lines within each circle. As the arm of the spring in Fig. 2 is not shown by proper shading lines to be coiled to form an eye through which the screw or pin would be passed into the protector, I am forced to read those circles as being something else than screw heads. Now, I know from the description and from clauses one and two that Mr. Gorham's invention actually was the provision of a resilient protector, and the state of the art seems to corroborate that fact; therefore, in order that the construction illustrated in Figs. 2 and 3 may be operative so far as yielding is concerned, I am warranted in reading those circles as the ends of the spring arms, made flat as and for the purpose of preventing them from wearing or entering the fibre of the wood or other material of which the protector is made when in the movement of yielding, as the protector is described to do when the operator's body presses against the same, the ends of the spring arms move along the under surface of the protector.

In Fig. 2 no connecting or attaching device is shown for securing the arms of the springs to the protector, so that if the outer edge of the protector can be moved in the path of the dotted curved lines it will be seen that the end of the arm of the spring will rub along the under surface of the protector and towards its outer edge a distance depending upon the depression of the protector. It is in this rubbing action of the ends of the arms that I find a use for flattening the ends of the spring arms as the circles in Fig. 3 may be read to indicate.

If the circles were intended to represent screws, two parallel and nearly diametrical lines would appear in the circle.

X Q. 77. In view of the utter absence of statement or suggestion in the specification relative to flattening the ends of the springs, how do you consider that the mere failure of the draughtsman to provide lines indicative of nicks in screw heads justifies an assumption that the spring arms were flattened, and that the two circles referred to are not intended to represent devices for connecting springs to the protector?

A. My reading of the two circles tends to and I may say truthfully is necessary to the validity of the patent, in that the construction shown in Figs. 2 and 3 might be operative, so far as a yielding protector is concerned, so long as the arms of the springs are not fastened to the protector, as when fastened, as it would be if the circles represented screws, said screws would be additional obstacles
72 to those existing in the close arrangement of the protector between the cap piece and spring; therefore, to sustain the patent for the resilient and only novel feature in it, I read the circle as flattened portions of the spring arms, and I am not warranted in assuming them to be the result of incorrect work of a draughtsman.

X Q. 78. Do you not consider that the court in examining the drawing of this or any other patent, however defectively they may have been prepared, would be much more fully and reasonably justified in assuming that they were intended to represent such a construction as is shown in the model filed with the application for the patent than that they were designed to represent a construction which is not specified or even suggested in the patent?

A. I do not wish to express an opinion as to what view a court will or will not take in the matter involved in this question, nor as to whether they would be or not justified in any assumption. The model is not a part of the patent nor constructed in accordance with Figs. 2 and 3. If I am allowed to read those figures as the public must—that is, without reference to the model—I can render said figures as illustrating in the words of the statement of invention in lines 38, 39, and 40 thereof, "A wash-board protector constructed to bend or yield to pressure, and to return to position when said pressure is removed."

But when I read those circles as screws fastening the spring arms to the protector, it is not a yielding protector as illustrated and described in the patent.

(Objected to as not responsive; question relating to the construction of patent drawings generally, and not being limited to those of the Gorham patent.)

X Q. 79. Please state, for the information of the court, your own view as to the relative fitness and soundness of the two assumptions recited in X A. 78.

A. In my view it is fit and proper for the court, and also for the public and experts, to assume in a matter of doubt as to the proper reading of a drawing of any patent such a reading as is in conso-

nance with the invention as stated in the patent, and such as is necessary to the operativeness of the invention, in preference to an assumption or the adoption of a reading of said doubtful drawing in accordance with the model, when to apply the construction shown by the model to the doubtful drawing renders said drawing as illustrating an inoperative construction, unless other features of said doubtful drawing are also materially changed.

Especially would it be fit and proper and in accordance with the rules of construction to render a doubtful drawing in a way consonant with the invention, as to a single feature, when there is in the patent another drawing described as being of the same device, showing positively that the opposite rendering of the doubtful drawing is not warranted.

In other words, the fitness and propriety, in my view, depends wholly on the well-established rule that the patent—that is, its drawing, description, and claims—should be construed to its being sustained if possible, and that of two constructions to which it is susceptible that one which enlarges the scope of the patent beyond the statement of invention and claims thereof should not be adopted.

X Q. 80. The differences specified in the third and fifth clauses of
X A. 65 have substantially the same bases—that is to say, that in
the drawings of patent 223,338 the protector is indicated as
73 folded and susceptible of being folded closely against the
board A, while in model, Defendant's Exhibit "C," the protector cannot be brought any closer to the board than is permitted by the diameter of the coil of the springs; is not this the case?

A. Before answering the question directly I wish to call attention to the fact that I have intentionally avoided stating that the protector lettered "C" in the drawing is capable of folding. In the third clause specified in the question I speak of the "disposition" of the protector, and in the fifth clause I speak of it as being "laid" flat against the part A. As a mechanical expert I consider the protector C, Figs. 1, 2, and 3, as being not a foldable protector, because in the case of Fig. 1 the pivot is arranged below its inner edge, which is prevented from moving to the left and downward by the part A, so that in said figure the protector cannot be folded upward to its operative position.

As regards Figs. 2 and 3 the protector C is not foldable, because neither of its edges is pivotally confined.

Any device in order to be foldable must have one or the other of its edges confined against movement in a right line in any direction—meaning a straight line in any direction—and when so confined and moved upon its pivot or pivots it may be folded flat and return to a vertical or opposite flat position; furthermore, I can see a purpose in the invention of Mr. Gorham in not confining his inner edge of his protector C, in that said edge is rendered capable of being pressed by the springs into constant contact with the inner surface of the cap piece to prevent the escape of suds.

It will be noticed that in the form of construction in illustrated Figs. 2 and 3 that, waiving for the moment and temporarily the fact of the inoperativeness of such construction—that is to say, sup-

posing the material changes of such construction as shown in sketch E. B. S. to have been made, then I say it will be noticed that the function of the protector, which is employed when it is laid flat, destroys and is antagonistic to its function as a protector and its function of returning by means of the springs to its operative position as a protector.

Instead of being folded flat the protector, if unattached to the spring arms, in which condition it might be resilient and within the invention, yet it could not be folded or otherwise placed flat for packing purposes without bodily separation from the spring arms or without providing some means for retaining them and the protector in a position to be packed, such means not being shown or described in the patent.

And, finally, if attached to the spring arms as in the model, the protector does not fold, but is carried bodily by said arms over, downward, and away from said cap piece; and now, to revert to the question, the protector is prevented from being placed flatly against the board by reason of the rod and coiled springs being between them, so that this location of the spring is the basis for the fifth clause, while the third clause is on a different basis, namely:

The location of the pivot within the plane of and at a distance from the inner edge of the protector and the close proximity to the pivot of the part A.

X Q. 81. Notwithstanding the extended explanation you have given, I fail to receive the information sought, possibly by
74 reason of an objection on your part to my use of the term "folded." I will, therefore, put the question in this form: Is not the fact that in the drawings of patent 223,338 the protector is indicated as laid or placed closely against the board A, while in the model, Defendant's Exhibit "C," it cannot be brought any closer to the board than is permitted by the diameter of the coil of the springs, the essential feature in both the third and fifth clauses in your X A. 65?

A. No; it is not the fact; my last answer specifically sets forth an absolutely different reason for the inoperativeness of Fig. 1 than the fact of the presence of the springs between the protector and the board when laid flat.

X Q. 82. Are you not well aware from your practice as a solicitor of patents that the drawings forming parts of applications for patents are not required to be "working drawings" or to illustrate exact sizes and proportions and precise relative location of parts?

A. I am aware that drawings need not be working drawings and that the proportion of the parts need not be exact, but I am not aware of any rule of practice of the Patent Office which permits a change in the relative location in a drawing of the parts of a device, which change renders that device inoperative. I consider the features of the drawing under consideration as defects which were inadvertently overlooked by the examiner, or, more strictly speaking, by the Commissioner of Patents.

I find in office letter of December 18th, 1878, Defendant's Exhibit "O," the following in regard to the drawing: "Two of the figures

are numbered 3 in the drawing, and another figure has no number or description." I find also the following: "In view of the state of the art, as shown by the references cited, the construction shown in the figures at the bottom of the sheet of drawings cannot be considered as modifications of the alleged invention and said figures should be erased." The Defendant's Exhibit "O" also shows that said figures were once canceled and restored, being Figs. 4 and 5 of the patent.

I understand the requirement to erase said figures to be based upon the fact that they do not illustrate a resilient folder, which is also capable of being laid flat for packing purposes. To revert to the question, I will add to the answer that the drawings must be construed and read by the description of what is therein shown, because liberty of changing the relative location of the parts tends to enlarge the scope of the patent as well as to affect its validity.

(All the above answer after the word "inoperative," in the fourth line, excepting the last clause, objected to as not responsive and irrelevant.)

X Q. 83. The purpose of drawings forming part of patent applications is to inform those skilled in the art to which the applicant's invention relates how to construct or apply such invention, is it not?

A. In connection with the description of the same, the drawings are for that purpose and to inform the public at large of the nature and extent of the invention.

X Q. 84. And are not matters of mere constructive detail, location, and proportion presumed, and reasonably presumed, to be within the ordinary skill and ability of those familiar with the art to which the improvement relates?

A. Matters of construction, detail, location, and proportion may be presumed to be within the ordinary skill and ability of
75 those familiar with the art only when such matters are not of the gist of the invention and necessary to its operativeness and essential to a clear, concise, and full disclosure of the invention, not only as to its nature but as to its extent. The scope of the Gorham patent, 223,338, is, more or less, dependent upon the relative location and proportion of the parts as well as upon the construction of those parts individually. If this patent does not show upon its face a resilient protector which is capable of folding within the frame-work for packing purposes and of returning to its operative position by reason of its resiliency, then claim three is invalid. Unless the limitations in said claim are held to be essential and not as stated in the question, matters of mere constructive detail, location, and proportion, said claim must be construed to cover all constructions which permit the protector to be placed within the common plane of the frame-work for packing purposes, as, for example, Defendant's Exhibits "E," "F," "G," "H," "J," "K," "L," and "M."

I therefore cite the third claim in this Gorham patent as an example wherein liberty of changing the proportion and location of

the parts from that shown in the drawings and described, has a material bearing on the validity and scope of a patent.

(The discussion of the Gorham patent volunteered in the above answer objected to as irrelevant and not responsive, and, so far as the same relates to matter of law in assuming to construe and pass upon the validity of claim three of said patent, as wholly incompetent.)

X Q. 85. Is it your opinion that a mechanic of ordinary skill and ability in the manufacture of wash-boards would not be able to construct a wash-board according substantially with Defendant's Exhibit "C" from Figs. 1, 2, and 3 of the Gorham patent, taken in connection with the descriptive matter thereof?

A. In the first place, Fig. 1 would have to be discarded entirely, as it is inconsistent with the construction shown in Figs. 2 and 3.

A single wash-board could not be made which would illustrate the constructions shown in all of the three figures. By following Figs. 2 and 3 and the description any mechanic would have to exercise a faculty of construing language and of reading drawings, and would have to add to his board devices neither shown nor described, as well as to change the relative location and proportion of the parts, in order to construct from this patent a board like Exhibit "C."

X Q. 86. Is it your opinion that the supposed inoperativeness of the constructions indicated by Figs. 1 and 2 of the Gorham patent which you have alleged in answers 4 and 5 is due to any other or further cause than the neglect or failure of the draughtsman to conform precisely to such proportion and relative location of parts as exist in the model, Defendant's Exhibit "C?"

A. As I have heretofore stated, I have no authority for saying that the draughtsman has neglected or failed in any respect, nor do I know whether or not he had the model to make the drawing from. I am forced to read the drawings by the aid of the description, and I have no facts upon which to base an opinion as to whether the inoperativeness of the construction indicated by Figs. 1 and 2 are due to the neglect and failure of the draughtsman; but I have facts and an opinion that the said inoperativeness is due to the particular construction itself which said figures illustrate.

76 X Q. 87. Has the objection which you have expresed in answer 9 to the correctness of the preliminary description of Fig. 1 of the drawings of the Gorham patent any other or further basis than the fact that you do not find the proportion and relative location of parts in said figure to be absolutely accurate?

A. I have not stated that Fig. 1 is inoperative because the parts are not absolutely accurate in relative proportion and location, but by reason of peculiarity of construction.

To revert to the question, my answer to question 9 has a further basis than the construction, location, and proportion of the parts, in that said figure is described as of an article made in accordance with Gorham's invention, which he specifically states to be a pro-

tector capable of yielding to pressure and of returning to operative position when said pressure is removed.

I read Fig. 1 as not showing such a protector.

X Q. 88. Do you consider that the fact that the wash-board is shown in Fig. 3 as inclined from a vertical plane causes said figure not to be a "front view," as it is stated to be in the preliminary description, line 56 of the patent?

A. In patent matters the words "front view" mean a front elevation.

Now, if Fig. 3 were a front elevation of the device as shown in Fig. 2—that is, with the protector in what I have designated its operative position—I should see at the top of the figure the front edge of the cap piece and the front edge only of the protector, and I would not see the bottoms or end faces of the side pieces at the lower part of the figure.

I would also see the ends of the spring arms.

I therefore have called Fig. 3 not strictly a front view.

X Q. 89. Has your statement in answer 10 that you find the combination which you understand to be set forth in claim one of the Gorham patent illustrated only in one figure thereof, to wit, Fig. 4, any other or further basis than the objections recited by you in the course of your deposition as to the correctness of proportion and relative location of the parts in Figs. 1 and 2 of said patent?

A. My answer referred to is not based upon the objection that Figs. 1 and 2 illustrate inoperative devices, but upon the usual practice of presenting the generic claim in a patent first in the series of the clauses of the claim, and upon the actual terms of the claim itself, which specify the invention as being for a protector which is itself constructed so as to do certain things when combined with a wash-board. The only protector which in and of itself will do the things specified is illustrated in Fig. 4.

X Q. 90. Referring to your answer 12, please point out, if you can, in the Gorham patent, any statement of the patentee by which he limits himself to protectors having a resilient function. The question does not ask your opinion of or deduction from any passage or passages of the patent, but merely an indication of what, if any, words thereof you believe institutes such limitation.

A. First, by the word "my," line 95.

Second, by the word "the," line 102.

Third, by the word "constructed" and the words "substantially as shown," as these words occur in the third claim.

77 Fourth, by the words "and also to return at all times to position when said pressure is removed," lines 90 and 91.

Fifth, by the words "C is the protector and C^1 a spring, which may be either a coupler between the protector and the wash-board frame, as shown in Fig. 5 of the drawings, or the protector may be pivoted to the frame and the spring C^1 act to push or pull the protector into the position illustrated in Figs. 2 and 3," lines 73 to 78, inclusive.

Sixth, by the words "My invention relates to wash-boards, particularly to the combination with a wash-board of a protector con-

structed to bend or yield to pressure, and to return to position when said pressure is removed," lines 12 to 16.

Seventh, by the words "Protectors have been heretofore employed in connection with wash-boards, and they have been of but two general types, one wherein the protector is rigid and rigidly attached to the wash-board frame. A protector thus constructed is not capable of yielding or moving from its position when the body of the operator presses against it, and it is on this account frequently objected to. The second type is when the protector is attached to the wash-board frame by a joint or pivot and is allowed a swinging movement, but it possesses no elastic or resilient quality or function, and when removed by pressure has no power to return again to normal position when said pressure is removed. My invention is designed to overcome the objections and defects presented in these two types of protectors, and as said invention broadly comprehends any wash-board protector constructed to bend or to yield to pressure and to return to position when said pressure is removed," lines 19 to 40.

Eighth, by the word "spring," line 55.

Ninth, by the words "elastically pivoted," lines 59 and 60.

Tenth, by the words "itself yielding and returning to position," line 63.

Eleventh, by the words "spring coupler," line 67.

X Q. 91. Do you find in the Barnes patent, Defendant's Exhibit "E," a protector of any description whatever either described or suggested?

A. I do; he calls it "The upper part as represented by the letter B in Fig. 1."

X Q. 92. Is the function of a protector anywhere ascribed to such upper part?

A. It is, inferentially, in the words following those quoted in my last answer, to wit, "Is also made similar to the upper part of the common board." I understand the function of the upper part of a common board—that is, the cap piece, side pieces, and branding board—to be to protect the clothes of the operator and to be used as a soap pocket.

X Q. 93. Then you used the term protector, in this connection, in the sense that the cap piece of an ordinary board is a protector, and no further; is this the case?

A. My previous answer specifically includes, as forming portion of the protector, ordinary boards, the side pieces, and branding board with the cap piece.

If the words, "no further," in question mean that the cap piece is a protector only in function, I wish to state that it serves other functions, one of which is to strengthen the frame-work.

X Q. 94. Do you find in the Barnes patent, Defendant's
78 Exhibit "E," any device whatever which, by projecting beyond the front of the cap piece of the "top part" B is capable of performing the function of a protector—that is, "to shield the person of the washer from splashing water or suds?"

A. I do. Barnes describes an arrangement of the top part with

relation to the lower part, which he calls a "common tub wash-board;" in which arrangement the lower edge of what would be in a common board the branding board rests upon and extends across the upper end of the lower part. This branding-board portion in this position, in the words of the claim, projects beyond the front of the cap piece, said front being its inner surface.

When the parts are thus arranged the lower part stands upon the bottom part of the tub with its upper portion leaning against the inside of the tub and projecting more or less above said side. In this position the lower part or the wash-board proper is adapted for use as such as is any ordinary wash-board. In the act of washing clothes the body of the operator may come in contact with and rest against the cap piece.

Now, it will be observed that in drawing the clothes upwardly on the board the splashing water or suds will be brought up with the clothes and further than the clothes, and strike upon and more upwardly on the branding-board portion of the protector and against the front or inner surface of the cap piece, and these two parts will divert the water, causing it to return down upon the board and into the tub, thus shielding the person of the washer. The branding-board part of the protector is inclined upwardly from the rubbing surface of the board proper, and is surmounted by the clear depth of the cap piece, so that when in operative position they together constitute a protecting surface, projecting above the board to a distance equal to about two and a half times the thickness of the board, which is substantially and in effect the same proportionate protecting surface as is provided in Defendant's Exhibit "C."

Barnes also broadly claims hinging the upper part to the lower part and allowing the board to be turned over, which, when done, renders the board and its protector capable of being packed flat.

I consider Barnes as disclosing a foldable protector, pivoted to the outside of the side pieces of the frame-work, instead of to the inside of said pieces, as subsequent inventors have done.

The length of the extensions lettered C below the lower edge of the branding-board part of the protector being immaterial, except so as to permit the board to be turned over, I deem it important to mention that the angle of presentation or the relative position of the branding-board portion of the protector with the wash-board proper is changed when said protector is folded from its operative position into a common plane with the board proper. I consider this feature essential to every foldable protector, and find it lacking in protectors which do not fold.

X Q. 95. Please indicate by letter of reference on the drawing of the Barnes patent such part or piece of the structure represented therein which in your opinion projects beyond the front of the cap piece of the top part B, as specified in X Q. 94, and, if such part or piece be not lettered, please mark a letter of reference upon it.

79 A. I find such piece represented in Figs. 1 and 2 of the Barnes patent, and having on it in each of those figures the letter B. Said Fig. 2 represents said part B, the cap piece, and the extension C in position to perform the function of a pro-

tector, said figure, however, illustrating the whole device inverted, to illustrate its capability of being used in that position for a special purpose described in the patent and not herein material.

I have described in my previous answer the functions and operations of the device when used in a position illustrated by reversing said figure.

X Q. 96. Is the inclined board D of the Epeneter and Grahl patents, Defendant's Exhibit "G," described or shown as "foldable" or as "pivotally mounted on the side pieces," or does the patent contain even the remotest suggestion to such effect?

A. The patent mentioned did not for the first seven years of its existence publish to the public or in any manner disclose that the inclined board lettered D (the purpose of which, however, was stated as being for keeping the operator from getting wet) is in any degree foldable or pivotally mounted on the side frames.

The model, however, discloses such a function and pivoting of said board, the model being Defendant's Exhibit "H."

The flexible portion of E is, however, capable of being folded substantially wholly within the frame-work of the board, and to render the board D capable of also being folded down into the frame-work it would be only necessary to reduce its dimensions at portions projecting above the side piece to agree with the dimension which is below the side pieces.

Taking the cap piece as the top of the wash-board, the board D is without change in dimension, "a protector located below the crown piece and between the side pieces of the wash-board frame, and constructed to fold" down upon the wash-board frame.

Counsel for defendant offers in evidence an agreed copy of th reissue of Epeneter and Grahl, No. 9022, dated January 6th, 1880, and the same is marked Defendant's Exhibit "Q."

X Q. 96. Does the fact that the inclined board D of Epeneter and Grahl has a slight range of swinging movement or, as stated in their reissue, "is loosely or movably attached to the frame," constitute it, in your opinion, a foldable protector?

A. It does. The folding function is present in the invention, but limited in degree only; it is mounted on pivots and is capable of being folded from an upwardly inclined position to a vertical position. The principal which distinguishes foldable protectors from non-foldable, which I stated previously in connection with the Barnes invention, is embodied in the Epeneter and Grahl protector, because when moved on its pivots the angle of presentation to the wash-board proper is changed.

X Q. 97. Would the supposed foldable function which you have ascribed to the inclined board D of the Epeneter and Grahl patent impart to wash-boards constructed in accordance with said patent and model any advantage whatever in respect to packing for shipment or protection of the protector from injury? My question is limited to wash-boards constructed in accordance with the patent and model as they are and not as they might be changed to accord with subsequent inventions.

80 A. The reissue patent claims broadly the protector D pivotally attached to the upper portions of a frame-work to a wash-board, and the question limits me to such changes as would be suggested by prior patents. I am free to admit that the foldable function, although absolutely present, is so limited in the mere matter of distance that the protector is not capable of being folded completely down upon or completely down into the wash-board or its frame, and therefore the advantages mentioned in the question would not exist without increasing the foldable function as it had been increased twenty years before Epeneter and Grahl's invention by Barnes, Defendant's Exhibit "F."

All I have said applies to the original Epeneter patent, granted in 1872.

While, if I consider the reissue of said patent granted in 1880, I would be warranted in taking suggestions of different instances in which the folding function had been variously extended as in the remainder of defendant's exhibits.

X. Q. 98. The protecting member in the Frike patent, Defendant's Exhibit "L," is the tilting angle plate, or tilting piece H, is it not?

A. I consider the plates H, in those portions thereof only which project beyond the part F, as being a part only of the protecting surface, that part which folds down upon the wash-board frame.

I consider the surface of the part F which is adjacent to the said protecting part of H as the protecting surface which folds down into, even with, and below the general plane of the wash-board frame, and is located below the crown piece and between the side frames, and constructed to fold.

The outer surface of the parts H, I consider the full equivalent of a cap piece, as it serves as a rest for the body of the operator.

X Q. 99. Is it not the fact that the tilting piece H is pivoted to a double-faced wash-board in the longitudinal central plane thereof, and that at all times and under all circumstances one or the other or both of the arms or "pieces" of the plate H must and does project beyond the general plane of the wash-board frame?

A. It is. In use, when the body of the operator is in contact with the tilting plates H, they occupy a relative position to the rubbing surfaces lettered B D, which is illustrated in Fig. 2.

In that position, or in any other position that they may occupy at any time; such positions do not affect the fact of the presence in the invention of Anne Frike of each and every element specified, and all located, arranged, and constructed as specified, and possessing the functions mentioned in the third claim of the Gorham patent, 223,338, and this when either side of the wash-board, Defendant's Exhibit "M," is considered independently of the other. The fact that one or the other of the projecting plates H of a double board projects at right angles therefrom is not a disadvantage for packing flat for transportation, and two or any multiple of boards can be laid together with the feet of one against said projecting portion of the other and with its projecting portion against the feet of the other,

whereby square packages of boards may be formed in which the protectors are not exposed to injury.

X Q. 100. Do you consider the protector, when in the position shown in Fig. 2 of the drawing, to be folded down into or upon the wash-board even with or below the general plane of the wash-board frame?

A. I do not. I read Fig. 1 as illustrating such a disposition of the protector.

81 X Q. 101. When in the position shown in Fig. 1 is not one of the arms wholly outside of and above the level of the longitudinal frame pieces, and does not the other piece of the plate H project for nearly half its length beyond the opposite side of the frame pieces?

A. One of the arms is folded down upon the wash-board, as indicated in the third claim of Gorham. The remaining part adjacent to the inner surface of said arm, and constituting therewith the remainder of the protecting surface, is folded down into the framework of the wash-board; the other projecting portion of the plate H does project as mentioned in the question.

I do not consider it necessary to use a double protector on a board having but a single rubbing surface, and should not consider it an act requiring invention to remove one of the projecting portions of the plate H and apply the other and the square shaft F to a board having a single rubbing surface, as these parts are shown to be applied to a double board.

X Q. 102. Please indicate, by letters or figures of reference on the drawing of the Frike patent, any of the following elements or members which, in your opinion, are shown therein, to wit: (1) a crown piece; (2) a protector located below the crown piece and between the side pieces of the wash-board frame, and (3) a protector constructed to fold down into or upon the wash-board even with or below the general plane of the wash-board frame.

A. I have indicated in pencil on Defendant's Exhibit "L," in Fig. 2 of the drawing, by the figure "Z," a crown piece.

This crown piece consists of substantially the portions above the dotted line X in said figure.

It is the full equivalent of crown pieces or cap pieces in all foldable or swinging protectors which carry the crown piece with them.

The question evidently being formulated from claim three of the Gorham patent, I call attention to the fact that the "crown piece," as mentioned in the claim, is not as an element of the combination, but to distinguish the location of another element.

In the same sense the portion marked "Z" by me is a full equivalent of the element required by the question to be indicated.

I have marked the surface of the part F "2," which I consider a protector located below the crown piece and between the side pieces of the wash-board frame.

I have also marked the same surface "3" as a protector "constructed to fold down into or upon the wash-board even with or below the general plane of the wash-board frame." I have marked Fig. "4," a protector constructed to fold down upon the wash-board.

I wish to analyze the third claim of the Gorham patent, in view of the question now under consideration. The said claim is for but two elements, namely, a wash-board and a protector—the wash-board being of any material or form, the protector being located in a particular place and constructed to fold down into either one of four positions, and not into two or more of said positions. Those positions are specified in the claim as follows:

First. Down into the wash-board.

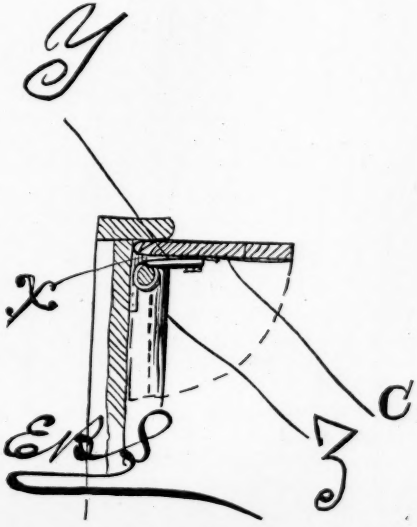
82 Second. Down upon said wash-board, the word wash-board including the frame-work, not merely the rubbing surface.

Third. Down into the wash-board even with the general plane of the frame.

Fourth. Or below said general plane; and, finally, all of these particulars of location, construction, and capability or function shall be substantially as shown.

The disjunctive conjunction "or" used in the claim, as well as the law of impossibilities, render it unnecessary to find in a previous patent the combination of a wash-board and a protector in which the latter is capable of doing all of these four things in order to anticipate the invention claimed, but such anticipation is accomplished by the production of a prior patent disclosing the combination of a wash-board and protector, the latter being capable of doing any one of the four things specified in said claim. I therefore do not consider the protector "4" indicated by me required to be indicated or essential to the operation of the remaining elements indicated by me.

As suggested in the clause preceding the claims, the angle of the protector "4" may be made greater or less than that shown. It could,



therefore, be arranged as a direct extension of the protector "2" if desired, but this is unnecessary and immaterial.

(The entire disquisition upon the Gorham patent volunteered in the above answer objected to as irrelevant and not responsive, the question having no relation, either directly or by implication, to said patent.)

E. B. STOCKING.

Sworn and subscribed before me this 27th day of February, A. D. 1885.

SAMUEL BELL,
Special Examiner.

83 *Defendant's Testimony in Rebuttal.*

United States Circuit Court, Eastern District of Pennsylvania.
April Sess., 1883. In Equity.

JAMES T. SARGENT and JOHN H. GORHAM, Administrator, &c.,
vs.
EDWIN K. BURGESS. } No. 24.

TUESDAY, *March 31st.*, 1885.

Met, pursuant to adjournment, at 11 o'clock a. m.
Present: Same counsel as before.

MARSHALL H. FARNSWORTH, a witness produced on behalf of respondents, being duly sworn, deposes and says as follows:

Q. 175. Please state your name, age, residence, and occupation.

A. My name is Marshall H. Farnsworth; age, forty-eight years; I reside at Cleveland, Ohio, and by occupation a traveler, selling wooden ware and metals.

Q. 176. Have you had any experience in the sale or manufacture of wash-boards?

A. I have; my recollection is from July, 1877, to March or April, 1881—between four and five years.

Q. 177. What wash-board did you handle during that period of time?

A. Various kinds.

84 Q. 178. Are you familiar with the complainants' wash-board, Defendant's Exhibit "B?"

A. I am.

Q. 179. Do you recollect whether the Gorham wash-board was originally put on the market in that shape or not?

(Objected to as immaterial.)

A. No, sir; it was not.

Q. 180. Will you please state the form and construction of the Gorham wash-board as it was originally put upon the market?

(Same objection.)

A. It was on the market without a protector originally. It was in 1877 without a protector, as near as I can recollect, and it was on the market about a year or more without one.

Q. 181. Will you please describe how the first protector was made and attached to the board?

(Same objection.)

A. The first protector consisted of a piece of thin material or board with two corners rounded, with a spring at each end, and a rod running through the springs and placed in holes through the legs, and running in and across the board, with one stem of the spring lying flat against the brand board and the other end was attached to a piece of board with rounded corners, formed the protector by forming a loop of the end of the stem, through which a copper tack or nail was driven.

Q. 182. What was the first change made upon this original pattern?

(Same objection, which is a continuation of this same line of examination.)

A. The first thing that was discussed about it was the cost of the rod running through it, and it was decided to use short screw blanks instead of it.

Q. 183. How were the screw blanks inserted or used?

A. By boring a hole from the outside of the leg about a thirty-second or sixty-fourth smaller than the diameter of the screw blank used, for the purpose of having them tight and firm when driven in, so that they would not slip out.

The next change that was made was bending the spring so that it would rest against the head piece instead of the brand board—that is, the lower stem. The upper stem was bent so as to lay in a slot made by a saw. A slot was made in each end of the protector, on the face of the protector, and there inserted and fastened with small U tacks—double pointed tacks.

Q. 184. Was that the form in which the board was originally put on the market?

A. Yes, sir.

Q. 185. How long was it in use in that form without further change?

A. My recollection is that it run along into 1879—somewhere along from the time the first one was made, which, I think, was in 1878.

Q. 186. What was your experience in the sale of the board in that—the original form in which it was put upon the market?

A. The board as first put upon the market with the protector was unsatisfactory, for the reason that the springs were not properly confined to produce the desired result—that is, bring the
85 protector back to its standing position after it had been bent down, and we had a great deal of trouble with them being sent back to the factory and discounts allowed on that account.

Q. 187. In handling the board, did you have to make the discounts and allowances to which you refer?

A. They were made by me or upon my report to the factory. Sometimes I would take them off and allow the parties the discounts without being returned to the factory; take off the protectors

Q. 188. Was the board withdrawn or abandoned on account of this dissatisfaction?

(Objected to as leading.)

A. No, I could not say that it was entirely; there was a great deal of talk about it. The talk related to the springs not being satisfactory.

Q. 189. Have you any recollection of how extensive the sales of the board as thus constructed were at that period—that is, during part of 1878 and 1879.

A. Well, there was quite a good many of them sold at first. I think the first lot I offered for sale amounted to one hundred and fifty to two hundred and fifty dozen. They were sold in small lots from that time on. I think there was some large lots sold, running from a hundred dozen to a car-load; I won't be positive, but that is my impression.

Q. 190. When was the next change made in the construction of the protector?

A. I think it was in 1879 or 1880; I think — was entirely in 1879.

Q. 191. What was the character of the alteration? Please show by explaining the change and connection with Defendant's Exhibit "B."

A. The change then made was by sawing off the ends of the protector to form a rock shaft or pivot, as shown in protector marked Defendant's Exhibit "R," and, in order to keep the rock shaft from splitting, pieces of zinc were cut and placed over them, as shown, on the ends of the protector, as in Defendant's Exhibit "S," which is one of the first half dozen ever made after the change, and in order to protect the spring and get the full resiliency of it and confine the ends properly the spring was inserted into the leg, as shown in Defendant's Exhibit "S," and the ends of the spring were inserted, as shown in Exhibit "S," one going through the metal on the end and the other end confined by a slot cut in the leg.

Q. 192. Was any further change made in the protector as originally constructed?

A. The change that I think of now was the under or lower edge of the protector was rounded or beveled so as to allow it to fold down.

Q. 193. Was this change made about the same time?

A. I think that was made when the first change was made when the first ones were put out, about 1878, about the time the rod was cut off. That was done for the purpose of allowing it to fold down—that is, it could not be placed so close to the head-board and fold without its being rounded or bevelled or set forward without its binding. It was bevelled off similar to Exhibit "R."

Q. 194. When was the board thus improved put upon the market?

A. I think there was some put upon the market in 1879, may not be before 1880. I give all these dates from recollection, and I am not positive as to the exact time.

86 Cross-examined by J. SNOWDEN BELL, of counsel for complainants:

X Q. 195. The first protector boards put upon the market, as well as all the subsequent protector boards, were provided with folding protectors, were they not?

A. So far as I know.

X Q. 196. And in each of said boards there was a protector located below the crown-piece and between the side pieces of the wash-board frame and constructed to fold down into or upon said wash-board even with or below the general plane of said wash-board frame. Is not this the fact?

A. It is a fact, so far as I know, after the change was made. They would fold, but they bound at the head piece; otherwise they were substantially as asked for in the question, so far as the folding was concerned.

X Q. 197. Saving as to the binding or undue closeness to the head piece, to which you have referred in your last answer, would not the boards before the change was made conform to the terms of X Q. 196?

A. Yes; they would fold down except for the way they were constructed; the protector simply needed perfecting, so far as the folding was concerned.

X Q. 198. And such perfecting, as you term it, consisted only in making them work sufficiently easy to prevent them from binding at the head piece, as specified in answer to X Q. 196; am I correct?

(Objected to, because witness has not stated that the only defect was in the binding of the protector against the head piece.)

A. After all those changes were made it folded.

X Q. 199. Is it not the fact that in the first protector boards put upon the market the protectors folded?

A. It did.

X Q. 200. As a matter of fact, were not the protectors of all the protector boards that you sold folded down at the factory before they were packed for shipment?

A. As far as I know.

MARSHALL H. FARNSWORTH.

Sworn and subscribed before me this thirty-first day of March, A. D. 1885.

SAMUEL BELL, *Examiner.*

Respondents rest.

87 DEF'T'S EXHIBIT D.

UNITED STATES PATENT OFFICE.

CHARLES H. WILLIAMS, of Cleveland, Ohio.

Wash-Board.

Specification forming part of Letters Patent No. 255,555, dated March 28, 1882; application filed February 10, 1882. (Model.)

To all whom it may concern :

Be it known that I, Charles H. Williams, a citizen of the United States, residing at Cleveland, in the county of Cuyahoga and State of Ohio, have invented certain new and useful improvements in wash-boards, of which the following is a specification, reference being had therein to the accompanying drawings, which form a part of this specification.

My invention relates to an improvement in wash-boards, and more particularly in adapting to them a protector and at the same time a support.

My invention consists in the construction and combination hereinafter more particularly pointed out in the claims.

Figure 1 is a side view of the upper end section of a wash-board. Fig. 2 is a central longitudinal vertical section of the same.

A is one of the ordinary legs of a wash-board, and C is the ordinary connecting back piece or branding-board for strengthening the board and to complete the usual soap-pocket, and D is a section of the board, upon which the corrugated zinc is placed. I construct my board with a cross-strengthening or head piece, B, which I make rounded on the outer surface, and at the upper edge I form a groove or lock, *b*.

To the inner sides of the legs A, near their upper ends, I pivot the arms E E of my protector. These arms E are rounded at their lower ends, and connecting with the upper ends is a rounded supplemental protector, which also forms a support and is provided with means for engaging with the end board, whereby the pieces B and F become locked and a broad comfortable surface is secured. On the lower edge of this protector and cross-piece F, I form a tongue, *e*, so that when the sections F and B are placed in position, as shown in Fig. 1, the tongue and groove *b* and *e* constitute a firm and rigid lock. To permit this—*i. e.*, the protector to be shifted—the lower ends of the arms E E are slotted for a short distance, as shown at *s*, through which a screw, *d*, or a simple headless nail is passed from the inner side.

In order to close the protector into the board or remove it from the position shown in Fig. 1, it is only necessary to raise the tongue *e* from the groove *b* by drawing the protector slightly backward, or until the lower end of the slots comes in contact with the screw or nail *d*, which will then readily permit the protector to be pushed slightly forward and be dropped into its place. I usually attach the

arms E to the piece F by dovetails, but they may be attached in any other way.

By constructing the wash-board as hereinbefore described I attain many advantages that are not found in other boards and overcome many disadvantages, whereby my protector is not liable to get out of order or become inoperative, and by this construction the cost of the board with this protector is but slightly increased.

The main object of this invention is to form a broad surface for the operator or washer-woman to rest her body upon in the act of washing, which is a great convenience.

By forming the outer portions of the parts F and B on one and the same arc of a circle, as shown in Fig. 1, the two form one continuous supporting-surface, and when locked together become as rigid and firm as though they were one and the same piece.

It will be seen that when the board is placed in proper position in the tub the rounded portion formed by the parts B and F is of the right contour in relation to the board and to the stooping or leaning position of the person using it to give easy and natural support to the body, as well as protection to the same from the splashing of the suds, which latter is the sole office of other protectors.

It will also be observed that as the protector can be folded into the board it takes no additional room in packing, and the space for the soap is not materially lessened, so that the board can be used, whether the protector is desired or not, without hindrance or obstruction.

I am aware that other construction of tongue and groove, or even tenon and mortise, or any ordinary fastening device or lock may be used to connect B and F, or hold them when in position, and I do not limit myself to any particular construction therefor; but I prefer the construction herein shown.

88 I am aware that it is not new to attach a protector to a wash-board by means of slots and pins, and claim nothing therefor.

What I claim, and desire to secure by letters patent, is—

1. A wash-board provided with a cross-piece, B, in combination with a removable protector piece, F, and a locking device whereby the protector and cross-piece may be brought together edge to edge and locked to form one continuous supporting surface, as set forth.

2. A wash-board provided with a cross-piece, B, in combination with a removable protector-piece, F, the cross-piece or protector having interlocking devices on their adjacent edges, whereby the protector may be locked to the cross-piece and the two form one continuous surface, as and for the purpose set forth.

3. In combination with the cross-piece B of a wash-board a removable protector, F, locking devices, substantially as described, for retaining the protector in line with the cross-piece, and the pivoted and slotted arms E E, as set forth.

4. The combination, with the cross-piece B, provided with a groove,

b, of the protector F, provided with a tongue, *e*, and the slotted and pivoted arms E E, as set forth.

In testimony whereof I hereby affix my signature in presence of two witnesses.

CHARLES H. WILLIAMS.

Witnesses:
JAMES H. MANDEVILLE.
FRED. G. DIETERICH.

(Here follows diagram marked p. 89.)

90 DEF'T'S EXHIBIT E.

Specification forming part of Letters Patent No. 8161, dated June 17, 1851.

To all whom it may concern:

Be it known that I, William T. Barnes, of the city of Buffalo, in the county of Erie and State of New York, have invented a new and useful improvement in wash-boards or washing-machines, and do hereby declare that the following is a full and exact description of the construction and operation of the same, reference being had to the annexed drawings making a part of this specification, in which Figure 1 is a perspective view of the fluted side of the board; Fig. 2 is a perspective view of the board reversed; Fig. 3 is a perspective view of the hand rubber.

To enable others skilled in the art to make and use my invention I will proceed to describe its construction and operation. I construct my wash-board in two parts; the lower part (as represented by the letter A in Fig. 1 in the annexed drawing) is made with hollows and rounds on one side and a smooth surface on the other, as shown at A in the reversed view, Fig. 2, similar (with the exception of the cloth I fasten on the smooth surface, as represented at A, the corner of which, for the sake of description, is turned up at M) to the common tub wash-board. The upper part (as repre-
91 sented by the letter B, Fig. 1) is also made similar to the upper part of the common board, with an extension (C C), through which a screw or rivet (D) passes on either side into the lower part of the board, forming a point, so that the lower part (A) may be turned round until it is checked by the top part (B) and the smooth or even surface (as represented by A, Fig. 2) used for washing fine fabrics. My rubber is an oblong square piece of wood fluted all round (as represented by Fig. 3), and is made of any convenient size to hold in the hand.

In operating my wash-board I place it in a tub (or otherwise) in which the clothes are to be washed and draw the clothes up and raise the top of the lower part (A), separating the upper and lower part at this point so as to allow a portion of the clothes to be placed between, and — then closes, holding them by the pressure from slipping off the board (as seen at N, Fig. 2), while using the rubber, and the same with both the fluted and smooth sides of the board.

(Model.)

89

C. H. WILLIAMS.

WASH BOARD.

No. 255,555. Patented Mar. 28, 1882.

Fig. 1.

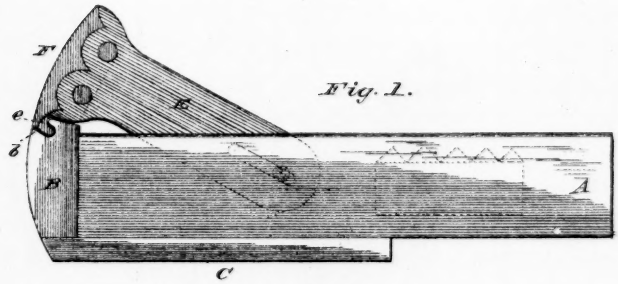
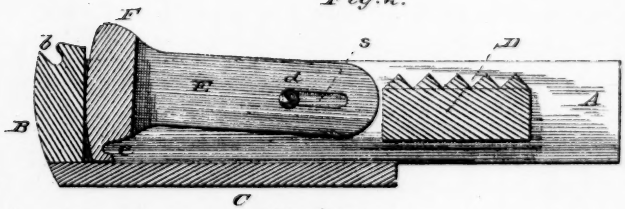


Fig. 2.



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v.
Burgess
p. 89

WITNESSES:

Chas. H. Dieterich

P. C. Dieterich

INVENTOR.

Charles H. Williams

W. T. Barnes,

Wash-Board,

No. 8,161, Patented June 17, 1851.

Fig 1

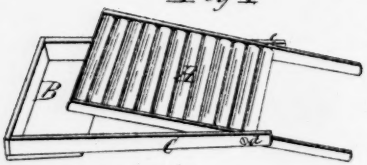
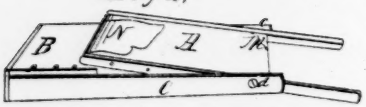


Fig 3.

Fig 2.



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N.
Burgess

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This mode of holding the clothes is of great importance, and the want of which is the great defect in all wash-boards and washing-machines, and is intended to be applied to washing-machines of whatever construction.

The lower part (A) may be used independent of the top (B) by using a board or back, but is not as good as when used as represented in the drawings. When the clothes are placed on the board the rubber may be used with one or both hands. Much time and labor is saved by the use of the rubber, as it covers a greater
92 extent than the hand in rubbing and presses on the clothes its whole length, and its position is shifted and changed with great facility, thereby rendering the rubbing more effectual and saves lifting the clothes, and also saves the hands from being worn or blistered, as when the clothes are rubbed in the usual way. It also admits of the position of the operator being changed, making the labor less tiresome.

From the peculiar manner in which it is necessary to apply manual force to wash clothes with a common machine the hands of the operator are, in general, very soon blistered and in all cases rendered sore. To avoid this difficulty, and also at the same time to facilitate the use of the machine and lessen the labor of performing a given amount of washing with it, is the object of my present invention.

What I claim, and desire to secure by letters patent, is—

1st. I claim fastening cloth (or its equivalent) on the board to prevent fine fabrics from slipping and from being torn or rubbed too much, but I do not claim lining the grooved wash-board with India rubber or other equivalent material.

2nd. I claim hinging the wash-board A to the frame B C for the purpose of holding the clothes while being washed and at the same time allowing the board to be turned over substantially as herein set forth.

WILLIAM T. BARNES.

Witnesses:
A. S. BEMENT.
JAS. G. DAVIS.

(Here follows diagram marked p. 93.)

94 DEF'T'S EXHIBIT G.

127,325.

UNITED STATES PATENT OFFICE.

JOHN EPENETER and BERNHARDT GRAHL, of Council Bluffs, Iowa.

Improvement in Wash-Boards.

Specification forming part of Letters Patent No. 127,325, dated May 28, 1872.

To all whom it may concern:

Be it known that we, John Epeneter and Bernhardt Grahl, of

Council Bluffs, in the county of Pottawattamie and in the State of Iowa, have invented certain new and useful improvements in wash-boards; and do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawing and to the letters of reference marked thereon making a part of this specification.

The nature of our invention consists in the construction and arrangement of a "wash-board," as will be hereinafter more fully set forth.

In order to enable others skilled in the art to which our invention appertains to make and use the same we will now proceed to describe its construction and operation, referring to the annexed drawing, in which—

Figure 1 is a plan view and Fig. 2 is a longitudinal vertical section of our wash-board.

A represents the usual frame for a wash-board, in which, in place of the usual corrugated rubbing-surface, we use a board, B, provided with bristles C C extending upward and attached in the same manner as on any brush. At the upper end of the board B, and in the frame A, is placed an inclined board, D, forming a part of an apron, the other part of which is formed by a piece, E, of oil-cloth, keeping the operator from getting wet. The oil-cloth E may or may not be used, as desired. The space G back of the apron is, by said apron, kept dry, so that the soap, which is generally laid in said space, will not get wet and soft as in other boards.

In washing, the soap is rubbed on the brushes C C instead of rubbing soap on the clothes. Therefore the soap will remain on the board until used up; whereas, in other boards, it will run down into the tub as soon as the washing is rubbed over it. As soon as the soap is rubbed over the bristles it makes a foam, and will remain until no more soap is in them.

Having thus fully described our invention, what we claim as new, and desire to secure by letters patent, is—

The combination of the board B with bristles C C, inclined board D, space G, and apron E, all as shown and described.

In testimony that we claim the foregoing we have hereunto set our hands this 27th day of March, 1872.

JOHN EPENETER.
BERNHARDT GRAHL.

Witnesses:
JOHN LINDER.
JOHN WYTTENBURY.

(Here follows diagram marked p. 95.)

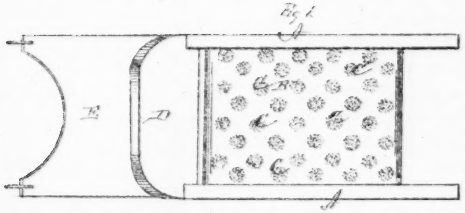
95

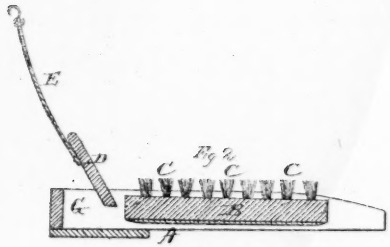
J. EPENETER & B. GRAHL.

Improvement in Wash-Boards.

No. 127,325. Patented May 28, 1872.

Fig 1.





No 399
Sargent Brazee
v
Burgess
95

Witnesses:
James E Hutchinson
C. L. Everett.

Inventor.
John Epeneter
Bernhardt Grahl
per
Alexander Mason
Attorneys.

97

J. A. COLE.

Wash-Boards.

No. 146,433. Patented Jan. 13, 1874.

No. 399.
Sargent et al vol
v.
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p. 97

Fig. 1.

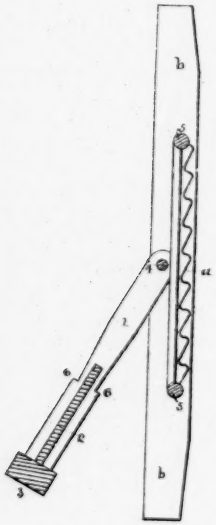
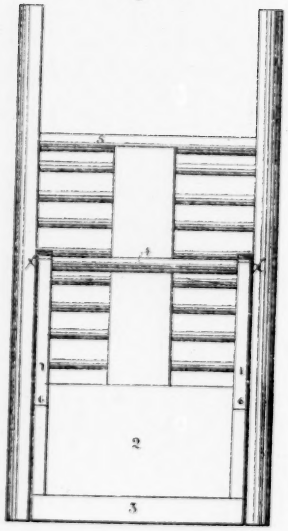


Fig. 2.



Witnesses.

A C Sloeum
J. S. Barkey

Inventor.

J. A. Cole

96 DEF'T'S EXHIBIT I.

UNITED STATES PATENT OFFICE.

JAMES A. COLE. of Northville, New York.

Improvement in Wash-Boards.

Specification forming part of Letters Patent No. 146,433, dated January 13, 1874; application filed October 10, 1873.

To all whom it may concern:

Be it known that I, James A. Cole, of Northville, Fulton county, New York, have invented a wash-board, of which the following is a specification:

My invention relates to providing a reversible wash-board with a pivoted head, so constructed and arranged as to adapt it to be folded between the projecting ends of the side bars, and thus occupy little space; or to be extended and set at an angle to the board proper for supporting it in the tub.

In the drawing, Figure 1 represents a vertical section of the board and folding-head, and Fig. 2 a front or plan view.

The frame of the board is formed of parallel side bars *b b* and connecting cross bars or rounds 5 5. The zinc or tin plate *a*, which is secured to and between these four parts, is corrugated in such a manner that the board may be made to present a coarse or fine rubbing-surface, according as one end or the other is uppermost in the tub. To adapt it for such use, the side bars *b* project equally at each end of the board. The folding head is formed of parallel side bars, which are connected by a board or panel, 2, and cross-bar 3. The same is pivoted to bar 4 between the bars *b b* of the board and centrally thereof, as shown, so that it will fit between the ends of bars *b* when it is required to pack the same for transportation or other purpose. To facilitate this the bars are cut away from 6 6 to the pivot-bar 4. The head may be set at an angle to the board proper to support it in a position convenient for performance of the rubbing process.

I do not claim a wash-board adapted, when reversed, to present a different rubbing-surface; but

I claim—

The combination, with the reversible board formed of plate *a* and bars *b b* projecting equally at each end and connected by bars 5 5, of the head pivoted centrally thereto, as shown and described, to adapt it to fold with or support the board, in the manner specified.

J. A. COLE.

Witnesses:
A. C. SLOCUM,
J. S. BARKER.

(Here follows diagram marked p. 97.)

98 DEF'T'S EXHIBIT L.

UNITED STATES PATENT OFFICE.

ANNA FRIKE, of Fowler, Illinois.

Improvement in Wash-Boards.

Specification forming part of Letters Patent No. 150,315, dated April 28, 1874; application filed March 27, 1874.

To all whom it may concern:

Be it known that I, Anna Frike, of Fowler, Adams county, Illinois, have invented a new and useful improvement in wash-boards, of which the following is a specification, reference being had to the accompanying drawings.

The invention relates to an improved wash-board, and consists of a board properly supported and provided on opposite sides with washing or rubbing surfaces composed of corrugations of different sizes, the top of the board being supplied with a tilting angle-plate, so that as either side of the wash-board is used a broad surface is presented to support the body of the operator and prevent the water from wetting the person. The object of the invention is to provide a double wash-board, either side of which can be used with equal comfort.

Figure 1 is a front elevation of a device embracing the elements of the invention. Fig. 2 is a vertical central section of the same.

A in the accompanying drawings is a board, one side of which is supplied with the corrugated plate B, the other with the corrugated plate D, the sizes of the corrugations differing as desired, to the end that coarse or fine material can be washed on the same board. Secured to the board A are the cleats E, the sides of which project properly above the corrugated surfaces, while their lower ends form the support for the board, their upper projecting above the upper edge of the board, and provided with bearings to receive the journals *a* on the ends of the lower corners of the square shaft F, the upper surfaces of which are secured to the angle-plate H in such manner that when one side of the plate is at right angles to the cleats E that surface of the shaft F below the plate shall be substantially in the same vertical plane as the adjacent surface of the board A. The plate H consists of two pieces of material of proper dimensions secured together at right angles, the shaft F attached to the re-entrant angle. Thus, be either side of the board used, it is only necessary to tilt the plate H toward the opposite side, which affords a broad surface to support the person, and also protects the clothes of the operator from being dampened or soiled.

It is obvious that the tilting piece H can be made with its side pieces at a greater or less angle than a right angle, and still effect the object of the invention; also that it can be used with good results upon any wash-board having a double face, whether the corrugations upon the faces are of like size or not.

No 399.
Sargent et al vs Burgess. p. 99

ANNA FRIKE.

Wash-Boards.

No. 150,315. Patented April 28, 1874.

Fig 1.

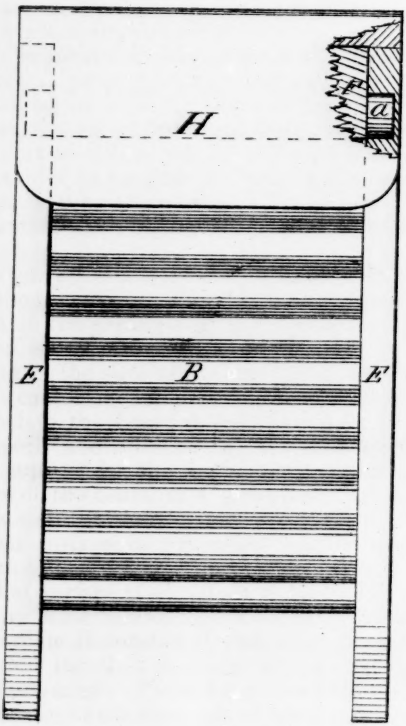
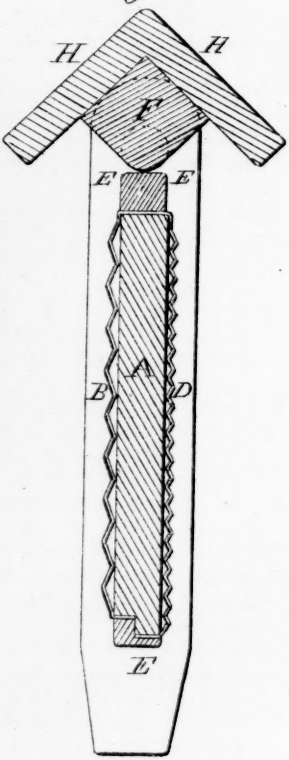


Fig 2.



Witnesses:
H. S. Miller
D. R. Cowl

Inventor:
Anna Frike
by her attys
Cox & Cox

What I claim as my invention, and desire to secure by letters patent, is—

1. The tilting piece H, the sides of which are placed at or about at a right angle to each other, and mounted upon the rock-shaft F, substantially as shown and described.

2. A tilting piece, in combination with a double-faced wash-board, substantially as described and set forth.

In testimony that I claim the foregoing improvement in wash-boards, as above described, I have hereunto set my hand and seal this 23d day of March, 1874.

her
ANNA × FRIKE. [L. S.]
mark.

Witnesses:
J. M. RICE.
H. C. NICHOLS.

(Here follows diagram marked p. 99.)

100 DEF'T'S EXHIBIT N.

UNITED STATES PATENT OFFICE.

WIYATT M. STEVENS, of Lowell, Massachusetts.

Improvement in Attachments for Wash-Tubs.

Specification forming part of Letters Patent No. 222,846, dated December 23, 1879; application filed May 16, 1879.

To all whom it may concern:

Be it known that I, Wiyatt M. Stevens, of Lowell, in the county of Middlesex and State of Massachusetts, have invented certain new and useful improvements in attachments for wash-tubs; and I do hereby declare that the following is a full, clear, and exact description of the invention, which will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings and to letters of reference marked thereon, which form a part of this specification.

My invention relates to a new and useful attachment to wash-tubs or other receptacles in which water or liquids of any kind are kept in motion or agitation during the process of washing clothing, or for similar or kindred purposes; and this invention consists of a detachable frame adapted to be easily secured to the tub or tank, and removed therefrom as easily, to which frame is secured an apron, made preferably of rubber cloth or other suitable water-proof material, the lower part of which apron lies inside of the tub or tank, and thereby serves as a protector for the operator and prevents the liquid in the tub from spattering over onto the garments of the operator. As soon as the washing is done the attachment with its apron may immediately be removed from the tub, if so desired.

In the accompanying drawings Figure 1 represents a plan view

of a wash-tub provided with my improved attachment. Fig. 2 represents a front elevation of the tub and attachment. Fig. 3 represents a longitudinal section on the line A B (shown in Fig. 1). Fig. 4 represents an elevation of the attachment.

Similar letters refer to similar parts wherever they occur on the different parts of the drawings.

a represents an ordinary wash-tub, and *b* represents a wash-board made in the usual manner. *c* is the frame, made of wire or suitable material, which frame is bent downward in both of its ends, where it is preferably curved in the shape of hooks or clamps *c' c'*, adapted to embrace the upper edge or rim of the tub, as shown, so as to secure said frame to the tub when the attachment is required for use.

I wish to state that I do not confine myself to this exact clamping device for securing the frame *c* to the tub or other receptacle, as this may be varied, as, for instance, clamping screws or bolts and sockets may be used, or other well-known means employed for attaching said frame to its tub or tank without departing from the spirit of my invention.

d is the water-proof apron, sewed or otherwise secured to the frame *c*, as shown, and made long enough so as to project inside the tub somewhat below the upper edge or rim of the tub, or more, as shown in Fig. 3.

By the use of this simple attachment the operator at the tub is protected from being wetted by the water spattered about during the process of washing clothes, &c. Besides this use, the frame also serves as a rest, against which the operator may rest his or her body during the performance of the work.

Having thus fully described the nature, construction, and operation of my invention, I wish to secure by letters patent, and claim—

The herein-described attachment for wash-tubs and similar articles, consisting of the frame *c*, having its ends *c' c'* adapted to be secured to the tub, and provided with a water-proof guard or apron, *d*, substantially as and for the purpose set forth.

In testimony that I claim the foregoing as my own invention I have affixed my signature in presence of two witnesses.

WIYATT M. STEVENS.

Witnesses:

L. G. HOWE.
W. N. FLAGG.

(Here follows diagram marked p. 101.)

101

W. M STEVENS.

Attachment for Wash-Tubs.

No. 222,846. Patented Dec. 23, 1879.

Fig. 1.

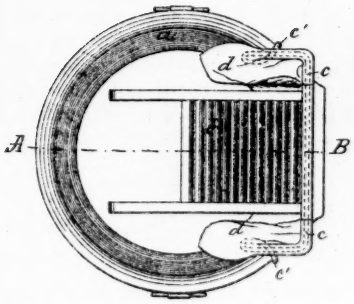
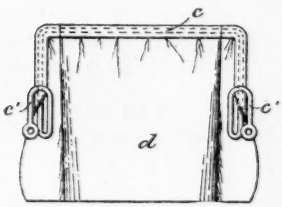


Fig. 4.



No. 399
Sargent et al &c.
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} p 101

Fig. 2.

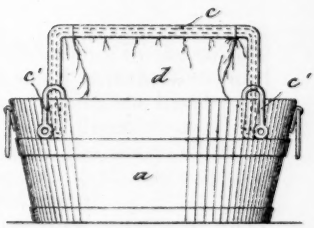
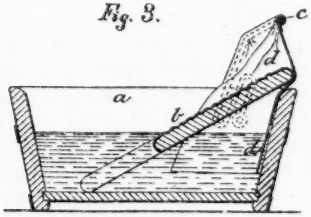


Fig. 3.



Witnesses:
F. Allen,
E. P. Brodrick

Inventor:
Wyatt M. Stevens.
by
Wm Andrews.
his atty.

102 (2–175.)

DEF'T'S EXHIBIT O.

DEPARTMENT OF THE INTERIOR.

[Vignette.]

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted John M. Gorham, January 6, 1880, number 223,338, for improvement in wash-board.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this third day of August, in the year of our Lord one thousand eight hun-
102½ dred and eighty-three and of the Independence of the United States the one hundred and eighth.

[SEAL.] (Signed) E. M. MARBLE,
Commissioner.

103 (637.)

[On margin:] Model, $15. H. dr'g.

To the Commissioner of Patents:

Your petitioner, residing at Cleveland, Ohio, prays that letters patent may be granted to him for the invention set forth in the annexed specification, and he hereby appoints Leggett & Leggett, of Washington, D. C., or their duly accredited assistant, his attorneys to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

JOHN M. GORHAM.

104 *Specification.*

Be it known that I, John M. Gorham, of Cleveland, in the county of Cuyahoga and State of Ohio, have invented certain new and useful improvements in wash-board frames; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings, which form part of this specification.

Substitute E, Jan. 8, '79.

105 *[My invention relates to wash-boards, and more particularly to wash-board frames, and it consists,

Substitute B, Dec., 30, '78.

broadly, in the combination with a wash-board frame of any construction, of a swinging, turning, movable, or yielding

* Words and sentences enclosed in brackets erased in original.

protector for preventing water & suds from splashing upon the operator.

[In the drawings Fig. 1 represents one form of my invention, showing the protector in its closed or folded position, as packed for shipment.

Fig. 2 represents the same with the protector raised to its normal & operative position.

Insert C, Dec. 30, '78. A is a wash-board frame of any fashion, dimensions, or material, and B is the washing or rubbing surface, which may be of any kind or material.

C is a movable or yielding plate or "protector" pivoted, journaled, hinged, or in any manner movably attached to the frame A, or to any suitable part of the wash-board whatever.

Cancelled Dec. 30, '78. Fig. 3 of the drawings shows one form of my invention in longitudinal section, and Fig. 4 sets forth a few of many modifications that may be adopted & still be comprehended by my invention.

The protector C may either be of a single or of two or more pieces.

Cancelled Dec. 20, '78. It may also be swung from either edge. If made from wood or metal some hinge or pivot connection between it and the frame A is preferable; but, inasmuch as my invention, as already specified, broadly consists in a bending or yielding "protector," the part C may, if desired, be formed from rubber or leather or any other sufficiently elastic substance, and in such case be rigidly tacked or riveted to the wash-board; or, if desired, instead of being actually fixed as a part of the wash-board structure, the "protector" C, in any of its forms, may be constructed as an independent article of manufacture and adapted to be detachably attached to a wash-board otherwise unprovided with anything of this kind.

My invention presents, among several advantages, the following important ones not possessed by any device of which I am aware, viz: Ease & compactness in packing for shipment; simplicity and cheapness of construction; a novel & attractive appearance; &, finally, by its folding or elastic character, a perfect adaptability to any operator, giving way as it does to slight pressure, thus not only saving itself & the board to which it is attached, but also being less wearing to the clothes & person of the operator leaning against it.]*

---

* Words and sentences enclosed in brackets erased in original.

109 What I claim is—

[1st. An elastic or yielding wash-board
Substitute D, Dec. 30, '78. "protector," substantially as & for the purpose specified.

2d. In combination with a wash-board, the protector C, made yielding or elastic, substantially as & for the purpose shown.

Insert A, Dec. 16, '78. 3d. The combination, with a wash-board, of a protector, C, adapted to swing upon said wash-board, substantially as set forth.]*

110 In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JOHN M. GORHAM.

Witnesses:

JNO. CROWELL, JR.
W. E. DONNELLY.

111 STATE OF OHIO, *County of Cuyahoga:*

John M. Gorham, the above-named petitioner, being duly sworn, deposes and say- that he verily believes himself to be the original and first inventor of the wash-board frame described in the foregoing specification; that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

JOHN M. GORHAM.

Sworn to and subscribed before me this 22nd day of October, 1878.

[L. S.] JNO. CROWELL, JR.,
Notary Public.

112 In the U. S. Patent Office.

In Re JOHN M. GORHAM'S Application for U. S. Letters Patent on Wash-Board Protector. Filed ——, 1878.

Hon. Com'r of Patents.

SIR: It is respectfully desired to amend the above-named application as follows, viz:

Add to the present claims the following claim:

["4th. A wash-board provided with a splash plate or protector, C, or its equivalent, said plate or protector adapted, without detach-

* Words and sentences enclosed in brackets erased in original.

A. Cancelled Dec. 30, '78.

ment from the wash-board to which it is fixed, to be moved, turned, or folded out of its normally operative position for purpose of economy of space in packing and shipment, substantially as shown."]*

Respectfully,

LEGGETT & LEGGETT,
Att'ys for Gorham.

[Endorsed:] 8487. 1. Amendment A. Dec. 16, '78. Cancelled. Patent Office U. S., Dec. 16, 1878.

113 C. Dec. 19, 1878. C. E. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Dec. 18th*, 1878.

John M. Gorham, care Leggett and Leggett, present.

"Wash-boards." No. 8487. Filed Nov. 27, 1878.

This application has been examined. The description of Figs. 3 and 4 appears in the body of the specification instead of following the description of Figs 1 and 2, which is found at the head of the specification; two of the figures are numbered "3" in the drawing and another figure has no number nor description. The claims are rejected upon the patent to Epeneter and Grahl, No. 127,325, May 28, 1872, in "wash-boards," the patent to Anna Frike, No. 150,315, Apr. 28, 1874, "wash-boards," being added for the 3d claim. In view of the state of the art, as shown by the references cited, the construction shown in the figures at the bottom of the sheet of drawings cannot be considered as modifications of the alleged invention and said figures should be erased.

C. G. GOULD,
Ass't Examiner.
S. BRASHEARS,
Act'g Exam'r.

[Endorsed:] 8487. 2. Official brief. Dec. 18, '78.

114 Room 105.

WASHINGTON, D. C., *Dec.* 28, 1878.

Hon. H. E. Paine, Commissioner of Patents.

SIR: In the matter of the application of Jno. M. Gorham for patent for "wash-boards," filed Nov. 27th, 1878—

Erase from 4th line, p. 2, of specification to 12th line, same p., and substitute:

* Words and sentences enclosed in brackets erased in original.

B. Cancelled Jan. 8, '79.

["First, in the combination, with a wash-board, of a protector loosely secured thereto, the same being constructed and adapted so that when not in use it may be folded parallel against the wash-board; second, in the combination, with a wash-board, of a protector loosely secured thereto, the same being constructed and adapted when not in use to fold against the wash-board so as to be inclosed within the limits of the latter
115 without projection therefrom in any direction, substantially as set forth; third, in the combination, with a wash-board, of a protector pivoted to the upper portion of the casing about the space, which latter is formed between the rubbing plate and the top of the board, said protector being adapted to fold downwardly and be enclosed within said space; fourth, in the combination, with a wash-board, of a protector loosely secured thereto, together with a spring device adapted to hold said protector in operative position, with an elastic adjustment to and from the board;* fifth, in the combination, with a wash-board, of a protector loosely secured thereto, together with a spring device adapted to maintain said protector in folded position against the board when the same is not in use; sixth, in the
116 combination, with a wash-board, of a protector pivoted thereto by a spring device, which latter is adapted to hold the protector in operative position with an elastic adjustment, and also to maintain the same folded parallel against the board when not in use."

Between 21st and 22d lines, same p., insert:

C. "Fig. 3 is a front view of the wash-board and protector as the latter is in the position shown in Fig. 2."

Erase from 5th line of 3rd p. to 13th line, same p.
Erase from "pieces," on 15th line of 3rd p., to 14th line of 4th p.
Erase all claim and substitute:

1st. The combination, with a wash-board, of a protector loosely secured thereto, the same being constructed and
117 adapted so that when not in use it may be folded parallel against the wash-board, substantially as set forth.

2d. The combination, with a wash-board, of a protector loosely secured thereto, the same being constructed and adapted when not in use to fold against the wash-board so as to be inclosed within the limits of the latter without projection therefrom in any direction, substantially as set forth.]†

*Words underscored are enclosed in pencil lines. [On margin:] Bad. Not shown in model or drawing.

† Words and sentences enclosed in brackets erased in original.

[3rd. The combination, with a wash-board, of a protector pivoted to the upper portion of the casing about the* space, which latter* is formed between the rubbing plate and the top
D. of the board, said protector being adapted to fold downwardly and be inclosed within said space, substantially as set forth.

4th. The combination, with a wash-board, of a protector
118 loosely secured thereto, together with a spring device adapted to hold said protector in operative position, with an elastic adjustment to and from the board,* substantially as set forth.

5th. The combination, with a wash-board of a protector loosely secured thereto, together with a spring device adapted to maintain said protector in folded† position against the board when the same is not in use, substantially as set forth.

6th. The combination, with a wash-board, of a protector pivoted thereto by spring device, which latter is adapted to hold the protector in operative position, with an elastic adjustment, and also to maintain the same folded parallel against the board when not in use,† substantially as set forth.] ‡

Cancel the two figures shown in lower portion of the sheet of drawings.

Resp'y, &c.,

LEGGETT AND LEGGETT, *Att'ys.*

[Endorsed:] 8487. 3. Amendment- B, C, D. Dec. 30, '78. Cancelled. Patent Office U. S., Dec. 30, 1878.

119 C. Jan. 7, S. M. E.

Room 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Jan'y 6th,* 1879.

John M. Gorham, care Leggett and Leggett, present.

"Wash-board frames." No. 8487. Filed Nov. 27, 1878.

This case has been examined as amended.

The 1st, 2d, and 3d claims are rejected upon the patent to Epeneter and Grahl, previously cited, and it is thought that the interlineations in the 3d claim and 3d clause of the statement of invention render those clauses ambiguous. The 4th claim can probably be allowed if the pencilled clause in said claim is erased, but as presented is rejected, there being no elastic adjustment of the protector "to and from the board."

---

* Words underscored are enclosed in pencil lines. [On margin:] Bad.
† [On margin:] Not in case.
‡ Words and sentences enclosed in brackets erased in original.

There is no foundation for the 5th and 6th claims in either the specification, model, or drawing, and said claims are therefore rejected.

The 1st, 2d, 3d, 5th, and 6th clauses of the statement of invention should be erased and the 4th clause of the statement of invention should be amended by cancelling the words "with an elastic
120 adjustment to and from the board."

C. G. GOULD,
Ass't Examiner.
S. BRASHEARS,
Act'g Exam'r.

[Endorsed:] 8487. 4. Official brief. Jan. 6, '79.

121 In the United States Patent Office.

In Re JOHN M. GORHAM, Application for Wash-Board Protector. Filed Nov. 27, 1878.

Hon. Commissioner of Patents.

SIR: We have amended this application by erasing the original specification and present amended claims and substituting a new specification and new claims.

In framing this amendment we have borne carefully in mind the references cited, and, believing as now presented the claims sought do not in any manner conflict with the references cited, we respectfully ask that allowance be had, unless additional anticipatory matter be produced.

Considering first patent, No. 127,325, of 1872, we find the invention there referred to to consist of a protector in the form of an oil-cloth apron, one edge of which is permanently attached to the wash-board, and the other adapted to be hooked to the person of the operator.

Again, in Anna Frike's invention, shown in patent No.
122 150,315, April 28th, 1874, we find a tilting head piece or "protector," as she terms it, especially adapted to a double-face wash-board. Neither of these devices just referred to possess the feature of elasticity or resiliency, or any of the characteristics intended to be covered by applicant's claims as now presented.

Respectfully, &c.,

LEGGETT & LEGGETT, *Att'ys.*

[Endorsed:] 8487. 5. Argument. Jan. 8, '79. Patent Office U. S., Jan. 8, 1879.

123 In the United States Patent Office.

In Re JOHN M. GORHAM, Application for Wash-Board Protector. Filed Nov. 27, 1878.

Hon. Commissioner of Patents.

SIR: It is desired to amend the above application by erasing the entire specification and claims, beginning on page two thereof to

the beginning of the attest, at the top of page six, and substitute therefor the following specification and claims:

---

124 [My invention relates to wash-boards, and more particularly to wash-board frames; and it consists, broadly, in the combination with a wash-board frame of a protector, adapted by its elasticity or resiliency,* or by any suitable spring or elastic attachment to yield to pressure and to return to its normal position when said pressure is removed.

E. Substitute F, M'ch 17, '79.

The object of this invention is to shield the person of the operator from the splashing of water during the use of the board.

In the drawings Figure 1 represents one form of my invention, showing the "protector" in its closed or folded position, as packed for shipment. Fig. 2 represents the same with the "protector" raised to its normal and operative position.

A is a wash-board frame of any fashion, dimensions, or material and B is the wash-board rubbing surface, which may be of any kind.

C is an elastic or resilient protector,* pivoted, journaled, hinged,

125 or in any manner movably attached to the frame A, or to any suitable part of the wash-board whatever. The protector C may be of a single or of two or more pieces; it may also be swung from either of its edges. If made from wood or metal some hinged or pivoted connection between it and the frame A is provided, inasmuch as my invention, as before specified, broadly consists in an elastic or resilient protector adapted to yield to the pressure of the body of the operator and return to its normal position when said pressure is removed. The part C may, if desired, be formed from rubber or any other sufficiently elastic substance, and in such case instead of being hinged or pivotally attached to the frame A it may be rigidly fixed thereto, or, if desired, instead of being actually fixed as a part of the wash-board structure, the protector C, as above specified, in any of its forms, may be constructed as an independent article of manufacture and adapted to be detachably attached to

126 the wash-board when unprovided with anything of this kind.

My invention presents, among several advantages, the following important ones not possessed by any device of which I am aware, viz: Ease and compactness in packing for shipment; simplicity and cheapness of construction; a novel and attractive appearance, and, finally, by its elastic and yielding character,* a perfect adaptability to any operator, giving way, as it does, to slight pressure; thus not only saving itself and the board to which it is attached, but, also, being less wearing to the clothes and person of the operator leaning against it.]†

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* Words underscored are enclosed in pencil lines. [On margin:] Too broad; protector is not elastic.

† Words and sentences enclosed in brackets erased in original.

127 [What I claim is—

1. A wash-board protector adapted by its elasticity or resiliency,* or by any suitable spring or elastic attachment, to yield to pressure and to return to its normal position when said pressure is removed, substantially as shown.

2. The combination, with a wash-board, of a protector loosely or movably secured thereto, the same being so constructed that when not in use it may be folded bodily against the wash-board, substantially as shown.

3. The combination, with a wash-board, of a protector loosely or movably secured thereto, the same being so constructed that when not in use it may be folded against the wash-board so as to be inclosed within the limits of the latter without projecting therefrom, substantially as shown.

128 4. In combination with a wash-board and a protector, C, or its equivalent, any* suitable spring or elastic device for attaching and connecting the said board and protector together, substantially as shown.

5. In combination with a wash-board and a protector, C, or its equivalent, any* suitable spring or elastic device for imparting resiliency to said protector, substantially as shown.]†

Respectfully submitted.

LEGGETT & LEGGETT, *Atty's.*

[Endorsed:] 8487. 6. Amendment E. Jan. 8, '79. Cancelled. Patent Office U. S., Jan. 8, 1879.

129 C. Jan. 15. S. M. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Jan'y 14th*, 1879.

John M. Gorham, care Leggett and Leggett, present.

"Wash-board frames." No. 8487. Filed Nov. 27th, 1878.

This case has been examined as amended.

Fig. 3 of the drawings is not described in the specification, and the statement of invention and portions of the specification (marked in pencil) are too broad.

The 1st claim includes matter not shown in either the model or drawing and is rejected.

The 2d and 3d claims are rejected upon the patent to Epeneter and Grahl, previously cited.

* Words underscored are enclosed in pencil lines.
† Words and sentences enclosed in brackets erased in original.

The 4th and 5th claims are too broad as presented, but can probably be allowed if amended as indicated in pencil. It appears from the argument of the attorney that he has misunderstood the construction of the protector in the patent to Epeneter and Grahl.

Said patent shows a board pivoted between the sides of the wash-board frame, to which an oil-cloth apron may be attached or may be omitted, if preferred.

C. G. GOULD,
Ass't Examiner.
S. BRASHEARS,
Act'g Exam'r.

[Endorsed:] 8487. 7. Official Brief. Jan. 14, '79.

130 In the U. S. Patent Office.

In Re JOHN M. GORHAM'S Application for a Patent Wash-Board Protector. Filed ——, 1878.

Hon. Commissioner of Patents.

SIR: It is desired to amend the above-named application by erasing the entire specification and claims, from the words "My invention relates to wash-boards," &c., to the end of the last clause of claims, and substitute therefor the following specification and claims:

F. Substitute G, Ap'l 16, '79.

[“My invention relates to wash-boards, and more particularly to wash-board frames, and it consists, broadly, in the combination, with a wash-board frame, of a protector, adapted by any suitable spring or elastic attachment or contrivance to yield to pressure and to return to its normal position when said pressure is removed.

131 The object of this invention is to protect the person of the operator from the splashing of water during the use of the board.

In the drawings figure 1 represents one form of my invention, showing the “protector” in its closed or folded position as packed for shipment, and Fig. 2 represents the same with the protector raised to its normal or operative position.

A is a wash-board frame of any fashion, dimensions, or material, and B is the wash-board rubbing surface, which may be of any kind; C is the protector, and it is pivoted, journalled, hinged, or in any manner movably attached to the frame A or to any suitable part of the wash-board whatever.

It is, moreover, provided or associated with any suitable elastic, resilient, or spring contrivance whereby the protector C is adapted to yield to pressure and to return to its normal position, as shown in Fig. 2 of the drawings, when said pressure is removed.

132 This protector C may be made of a single or from two or more pieces. Moreover, it may be swung from either of its edges.]*

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* Words and sentences enclosed in brackets erased in original.

[I do not in any degree limit myself to any specific contrivance whereby the protector C when moved by pressure against it shall spring back or return to its normal position, as in this respect my device may be indefinitely varied without a departure from my invention.

A wash-board and protector constructed according to my invention presents, among several advantages, the following important ones not possessed by any device of which I am aware, viz: Ease and compactness in packing for shipment; simplicity and cheapness of construction; a novel and attractive appearance, and, finally, by its qualities, as above specified, a perfect adaptability of the protector to any operator, giving way, as it does, to slight pressure, thus not only saving itself and the board to which it is attached, but
133 also being less wearing to the clothes and person of the operator leaning against it.

134 What I claim is—

1. A wash-board protector adapted by any suitable spring or elastic contrivance to yield to pressure and to return to its normal position when said pressure is removed, substantially as shown.

2. In combination with a wash-board and a protector, C, a suitable* spring or elastic device for attaching and connecting the said board and protector together, substantially as shown.

3. In combination with a wash-board and a protector, C, a suitable spring or elastic device for imparting resiliency to said protector, substantially as shown."]†

Respectfully, LEGGETT & LEGGETT, *Att'ys.*

[Endorsed:] 8487. 8. Amendment F. M'ch 17, '79. Cancelled. Cooke. Patent Office U. S., Mar. 17, 1879.

135 In the Patent Office.

In Re JOHN M. GORHAM'S Application for a Patent Wash-Board Protector. Filed ——, 1878.

Hon. Commissioner of Patents.

SIR: We herewith submit an amendment to the above application of John M. Gorham's, strictly concurring, we submit, with the last action of the examiner.

We have removed from the specification all the objectionable features pointed out, and in the claims we have also amended strictly in accordance with the requirements of the office; in short, we have done all the examiner seems to have required, and have removed every objection thus far raised to the allowance of this application; in view of which we respectfully ask that said application be allowed as at present amended.

Respectfully submitted.

LEGGETT & LEGGETT, *Att'ys.*

* Words underscored are enclosed in pencil lines.

† Words and sentences enclosed in brackets erased in original.

[Endorsed:] 8487. 9. Letter to office, M'ch 17, '79. Patent Office U. S., M'ch 17, 1879.

136 WASHINGTON, D. C., *April 16th*, 1879.

In Re JOHN M. GORHAM'S Application for Patent "Wash-Board Protector." Filed Nov. 27, 1878.

Hon. H. E. Paine, Commissioner of Patents.

SIR: It is desired to amend the above application by erasing the present amended specification and claims and substituting therefor the following specification and claims:

G. Substitute H, July 17, 1879.

137 ["My invention relates to wash-boards, and it consists broadly, 1st, in a wash-board provided with what I shall term a "protector," said protector adapted to move and yield to pressure and to return to position when said pressure is relieved; and, 2nd, in a wash-board protector having imparted to it by any suitable means* the character of elasticity or resiliency, whereby it is susceptible of yielding to pressure and of returning to position when said pressure is relieved.

(In the drawings figure 1 represents one form of device embodying my invention, wherein the protector is shown in a closed or folded position as packed for shipment. Figure 2 shows the same with the protector free or open and in operative position.)† Figure 3 is a front view of the device referred to in figures 1 and 2.

138 Figure 4 represents another or modified form in which my invention may be embodied, and figure 5 shows still another modified form of my invention.

A is a wash-board frame of any fashion, dimensions, or material, and B is the washing or rubbing surface, which also may be of any kind or material whatever. C is a movable or yielding plate or protector, and this protector may be pivoted, journalled, hinged, screwed, nailed, or in any suitable manner attached to the wash-board. The protector C may either be of a single or of two or more pieces. It may also be swung or attached from either of its edges.‡ If the protector is made from wood, metal, or any rigid, unyielding substance some hinge, pivot, or journal connection between it and the frame A is necessary, and when this form of construction is adopted some suitable spring or elastic attachment or connection must

139 be employed which shall operate to retain the protector in the position shown at figure 2 of the drawings, but which shall permit the protector to yield to pressure against it.]§

[Two of an indefinite variety of said springs or elastic connections or attachments are shown in the drawings. The one in Figure 3 is a coil spring, one end of which presses against the lower face of the protector and the other against the upper face of the wash-board

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* Words underscored are enclosed in pencil lines. [On margin:] Too broad.
† [On margin opposite words in parentheses:] No, and shown in ref's.
‡ [On margin:] Not clear how.
‡ Words and sentences enclosed in brackets erased in original.

frame, thus always tending to retain the protector in the position shown in figure 2 of the drawings. The other, shown in Fig. 5, represents a spring hinge or strip, which acts both as a means of attachment between the protector and wash-board frame, and also in the manner just specified in relation to the coil spring in Fig.
140 3; but inasmuch as my invention, as already stated, consists broadly in an elastically yielding protector, the part C may, if desired, be formed from rubber, spring sheet metal, or any other equivalently elastic substance, and in such case it may be nailed or screwed to the wash-board instead of being connected thereto by the hinge or pivot arrangement heretofore referred to; or, if desired, instead of being actually fixed and produced as an original part of the wash-board structure, the protector C, in any of its forms specified, may be constructed as an independent article of manufacture fitted to be detachably or permanently attached to a wash-board otherwise unprovided with anything of this description.

[My invention presents, among several advantages, the following important ones not possessed by any device of which I am
141 aware, viz: Ease and compactness in packing for shipment, simplicity and cheapness of construction, a novel and attractive appearance, and, finally, by its folding or elastic character, a perfect adaptability to any operator, giving way, as it does, to slight pressure, thus not only saving itself and the board to which it is attached, but also being less wearing to the clothes and person of the operator leaning against it.

142 What I claim is—

1st. An elastically yielding wash-board protector, substantially as shown.

2nd. In combination with a wash-board, a protector, C, adapted to move and yield to pressure, and also adapted, by suitable spring or elastic construction or attachment, to return to position when said pressure is relieved, substantially as shown."]*

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143 It is also desired to reinstate the cancelled figures of drawings and to number them from 1 to 5, as indicated in the above-amended specification.

Respectfully, LEGGETT & LEGGETT, *Attorneys.*

[Endorsed:] 8487. 10. Amend't G. Substitute spec. April 16, '79. Cancelled. Patent Office U. S., Apr. 16, 1879.

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* Words and sentences enclosed in brackets erased in original.

144 C. May 21. S. M. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *May* 20, 1879.

John M. Gorham, care Leggett & Leggett, Washington, D. C.

Application. "Wash-board frames." Filed Nov. 27, 1878. (8487.)

This application, as amended 16th ultimo, has been considered. Attention is called to notes penciled on the margin of the specification, especially as to Figs. 1 & 2 of the drawing, which do not show the invention.

Claim 1 is broad enough to cover a simple sheet of spring metal or rubber fabric, and a patent for that could scarcely be desired. Claim 2 is too broad to be patentable, being substantially for a result accomplished by any "suitable" means. If the word "suitable" be erased from the claim and the words "substantially as described" inserted after "attachment," the claim may, so far as advised, be allowed. As now presented both claims must be rejected.

L. M. E. COOKE, *Examiner.*

[Endorsed:] 8487. 11. Official brief. May 20, '79.

145 C. July 3. S. M. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *July 3d*, 1879.

John M. Gorham, care of Leggett and Leggett, present.

"Wash-board frames." No. 8487. Filed Nov. 27, 1878.

In view of another pending application involving an interference with this, twenty days from date are given for the adjudication of all preliminary questions arising in this application, at the expiration of which time the preliminary interference will be declared.

L. M. E. COOKE, *Exam'r.*
C. G. GOULD,
Ass't Examiner.

[Endorsed:] 8487. 12. Official brief. July 3, '79.

146 In the U. S. Patent Office.

In Re JOHN M. GORHAM'S Application for Patent "Wash-Board."
Filed November 27, 1879.

Hon. Com'r of Patents.

SIR: It is desired to amend this application by erasing the present

amended specification and claims and substituting therefor the following specification and claims, viz:

"My invention relates to wash-boards, particularly to the combination, with a wash-board, of a protector
H. July 17, '79. constructed to bend or yield to pressure and to return to position when said pressure is removed. This protector is to shield the person of the washer from splashing water or suds. Protectors have been heretofore employed in connection with wash-boards, and they have been of but two general types, one wherein the protector is rigid and rigidly attached to the wash-board frame. A protector thus con-
147 structed and attached is not capable of yielding or moving from its position when the body of the operator presses against it, and it is on this account frequently objected to.

"The second type is when the protector is attached to the wash-board frame by a joint or pivot and is allowed a swinging movement; but it possesses no elastic or resilient quality or function, and, when moved by pressure, has no power to return again to normal position when said pressure is removed.

"My invention is designed to overcome the objections and defects presented in these two old types of protectors; and as said invention broadly comprehends any wash-board protector constructed to bend or yield to pressure, and to return to position when said pressure is removed, it is apparent that I am not to be confined to any specific form or mere construction of device, inasmuch as a variety of modified mechanical structures may be adopted in embodying my said invention.

"I will, however, illustrate and describe one or two effective forms of device according to this invention.

"In the drawings—

148 "Fig. 1 illustrates a wash-board and its protector, made according to my invention. This [drawing]* figure is in longitudinal vertical section, and it represents the protector as laid down upon the face of the board, as packed for shipment.

"Fig. 2 is a similar view of the same device, only the protector is shown as freed and sprung out into operative position.

"Fig. 3 is a front view of the device, as shown in Fig. 2.

"Fig. 4 represents a modified form of my device wherein the protector, instead of being formed from a rigid piece and elastically pivoted to the frame, as shown in Figs. 1, 2, and 3, is made from a piece of rubber, spring metal, or equivalent material, susceptible of itself yielding and returning to position, and this is rigidly fixed to the wash-board frame, as shown.

"Figure 5 shows another modified embodiment of my invention, merely illustrating a different spring coupler, C′, from that shown in Figs. 1, 2, and 3.

"A is the wash-board frame, which may be of any size, description,

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* Words and sentences enclosed in brackets erased in original.

or material; B is the rubbing surface, which may also be of
149 any character; C is the protector, and C′ a spring, which may be either a coupler between the protector and wash-board frame, as shown in Fig. 5 of the drawings, or the protector may be pivoted to the frame, and the spring C′ act to push or pull the protector into the position illustrated in Figs. 2 and 3.

"The construction of the device shown in Fig. 4 I have already sufficiently specified in the preceeding explanation of the drawings.

"The operation of my device is readily understood. The spring C′ or the elastic character of the thing itself (as shown in Fig. 4), serves always to keep the protector in operative position (see Figs. 2 and 3). When the body of the operator presses against it, it yields in such a way as at the same time to press snugly against her person, and also to return at all times to position when said pressure is removed. It thus becomes very effective as a protector, while at the same time it is not* wearing to the person or clothes of the operator.

"Another peculiar feature of my wash-board is the flat manner in which it can be packed, as shown in Fig. 1 of the drawings.
150 This is a great convenience and advantage in packing for shipment; and, moreover, when thus packed, the protector is itself protected from injury, to which it would otherwise be exposed. This is accomplished by locating the protector, as shown in figures 1, 2, and 3 of the drawings, below the crown piece and between the side pieces of the frame.

"What I claim is—

Substitute I, Dec. 13, '79.

["1st. In combination with a wash-board, a protector constructed to bend or† yield to pressure and to return to position when said pressure is relieved, substantially as and for the purpose shown.]‡

"2nd. The combination, with a wash-board, of a protector and a spring, said spring interposed between the wash-board and protector, and constructed to operate in retaining said protector in its open position and to return it to that position when moved therefrom.

"3rd. In combination with a wash-board, a protector located below the crown piece and between the side pieces of the wash-
151 board frame and constructed to fold down into or upon said wash-board even with or below the general plane of said wash-board frame, substantially as and for the purpose shown."

Respectfully, LEGGETT & LEGGETT,
Attorneys.

[Endorsed:] 8487. 13. Amendment H. July 17, 1879. (Sub. spec). Patent Office U. S., Jul. 17, 1879.

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* Words underscored are enclosed in pencil lines. [On margin:] Pretty strong. The wear may be comparatively small.

† [On margin:] Add Barnes.

‡ Words and sentences enclosed in brackets erased in original.

152 C. July 23. S. M. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *July* 22*d*, 1879.

John M. Gorham, care Leggett & Leggett, present.

"Wash-board frames." No. 8487. Filed Nov. 27, 1878.

This application as amended has been examined, and attention is called to the penciled clause on page 4 of the specification.

As to the 1st claim, in the first place it is too broad to be patentable, because it covers a result rather than the means, and should at least be modified by inserting the words "substantially as described, so as to" after the word "constructed," in the second line of said claim. In the second place, it is a claim amounting, because of the term "bend or yield," to two specific claims, covering two different constructions, and should be further modified, as indicated in pencil, by the erasure of the words "bend or," in the second line of the claim. The 3d claim is rejected upon the patent to Epeneter and Grahl, previously cited.

Attention is called to the necessity of an early amendment,
153 as the time granted for putting the case in condition for the declaration of the preliminary interference has nearly expired.

S. BRASHEARS,
Act'g Exam'r.
C. G. GOULD,
Ass't Examiner.

[Endorsed:] 8487. 14. Official brief. July 22, '79.

154 WASHINGTON, D. C., *July* 24, '79.

In Re Application of JNO. M. GORHAM for Patent for "Wash-Board Frames." Filed Nov. 27th, 1878.

Hon. H. E. Paine, Com'r of Patents:

SIR: The examiner's action and requirements, as set forth in his letter of the 22nd inst., have been carefully considered. Applicant fails to see any necessity for amending either his specification or claims. Further, he knows of no section of the statute or rules of practice making it compulsory upon him to amend within the time arbitrarily fixed upon by the examiner, and hence he declines to comply with the examiner's requirements.

If the examiner desires to place this case in interference with another pending case he can undoubtedly follow his inclinations in that matter; but as for requiring applicant to amend within a certain number of days, this is a matter which applicant denies his right or power to enforce. As at present advised, applicant has no

amendment to offer, but insists that he is entitled to a favor-
155 able consideration of the specification and claims as last presented.

Applicant denies that the first claim is to a result, but holds that it is for devices constructed and adapted to effect a certain result. Further, applicant denies that the 1st claim is bad, in that it comprehends subject-matter for two specific claims. Further, applicant denies the pertinency of the patent to Epeneter & Grahl as a valid reference for the 3d clause of claim. A second action is requested relative to questions of form and to the merits of the case.

Resp'y, &c., LEGGETT AND LEGGETT, *Att'ys.*

[Endorsed:] 8487. 15. Letter to office. July 25, '79. U. S. Patent Office, July 25, 1879.

156 C. Sept. 9. S. M. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Sept 8th*, 1879.

John M. Gorham, care Leggett & Leggett, present.

"Wash-board frame." No. 8487. Filed Nov. 27th, 1878.

This application has been reconsidered as requested. The 1st and 3d claims are again and finally rejected upon the references heretofore cited and for the reasons previously given.

The interference in which the case is involved will be immediately declared under the third clause of Rule 51.

L. M. E. COOKE, *Exam'r.*
C. G. GOULD,
Ass't Examiner.

[Endorsed:] 8487. 16. Official brief. Sept. 8, '79.

157 *Interference.*

C. Sept. 9. S. M. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Sept. 8th*, 1879.

App. *pro forma.*

John M. Gorham, care Leggett and Leggett, present:

Please find below a copy of a communication from the examiner concerning your application for patent for an improvement in wash-board frames, No. 8487, filed Nov. 27th, 1878.

Very respectfully, H. E. PAINE,
Commissioner of Patents.

U. S. Patent Office, ex'r of interferences, Sep. 10, 1879.

Room No. —.

Your case, above referred to, is adjudged to interfere with the pending application, Fisher and Warren, of New York city, N. Y., for an improvement in wash-boards, No. 8997, filed May 1st, 1879, by their attorneys, Frost and Coe, No. 233 Broadway, New York city, N. Y., and the question of priority will be determined in conformity with the rules accompanying this. The preliminary statement demanded by rule 53 must be sealed up and filed on or before the 13 day of Oct., 1879, with the subject of the invention and name of party filing
158 it indorsed on the envelope. The subject-matter involved in the interference is—

1st. "The combination, with a wash-board, of a protector and a spring, said spring interposed between the wash-board and protector and constructed to operate in retaining said protector in its open position and to return it to that position when moved therefrom."

Set forth in applicant's 2d claim and shown and described by Fisher and Warren.

2d. "The wash-board A, in combination with the wash-board protector B, provided with the pins or lugs C and tension springs D."

Set forth in the only claim of Fisher and Warren, and shown and described by Gorham.

L. M. E. COOKE, *Exam'r.*
C. Y. GOULD,
Ass't Examiner.

[Endorsed:] 8487. 17. Official brief. Sept. 8, '79.

159 C. Oct. 31. S. M. E.

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Oct. 29th*, 1879.

John M. Gorham, care Leggett & Leggett, present.

"Wash-boards." No. 8487. Filed Nov. 27, 1878.

Since the last action in this case an additional reference for tha 1st claim has been discovered in the patent to Wm. T. Barnes, No. 8161, June 17, 1851, in "wash-boards," and this patent is added to the references previously cited.

L. M. E. COOKE, *Exam'r.*
C. G. GOULD,
Ass't Examiner.

[Endorsed:] 8487. 18. Official brief. Oct. 29, '79.

160 WASHINGTON, D. C., *Dec'r 13th*, 1879.

In Re JOHN M. GORHAM'S Application for Patent for "Wash-Board." Filed Nov. 27th, 1878.

Hon. Com'r of Patents.

SIR: It is desired to amend this application by erasing the 1st claim and substituting therefor the following claim:

"1st. In combination with a wash-board, a protector constructed substantially as described, so as to yield to pressure and to return to position when said pressure is relieved, substantially as and for the purpose shown."

I. L. & L.

Respectfully, &c., LEGGETT & LEGGETT, *Att'ys.*

[Endorsed:] 8487. 19. Amendment I. Dec. 13, '79. Patent Office U. S., Dec. 13, 1879.

(2–024.)

Issue division.
All communications should be addressed to "The Commissioner of Patents, Washington, D. C."

Serial No. —.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Dec. 16th*, 1879.

John M. Gorham, care Leggett & Leggett, present.

SIR: Your application for a patent for an improvement in wash-boards, filed Nov. 27th, 1878, has been examined and allowed.

The final fee, twenty dollars, must be paid, and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 4897, Revised Statutes. The office aims to deliver patents upon the day of their date and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees at least twenty days prior to the conclusion of the six months allowed them by law. The printing, photo-lithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention, as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for record-

ing the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully,

H. E. PAINE,
Commissioner of Patents.

[Printed across the face in red ink:] In remitting the final fee give the serial number at the head of this note.

[Printed on margin in red ink:] The within title is that given by the examiner in charge as most appropriate to your invention. Should you desire a change in the same, satisfactory reasons must be given therefor on or before the payment of the final fee.

161 $20. H.

Memorandum of Fee Paid at U. S. Patent Office.

Inventor, J. M. Gorham.
Patent to be issued to inventor.
Name of invention as allowed, wash-boards.
Date of payment, Dec'r 19th, 1879.
Fee, —.
Final fee, $20.
Solicitors, Leggett & Leggett.
Date of circular of allowance, Dec. 16, 1879.
Send Patent to M. D. Leggett & Co., Cleveland, Ohio.

[Endorsed:] Patent Office U. S., Dec. 19, 1879.

162 1878.
8487.

No. 223,338. Div. 8.

John M. Gorham,

Of Cleveland,
County of Cuyahoga,
State of Ohio.
Wash-board frames.
Rec'd Nov. 27, 1878.
Petition, "
Affidavit, "
Specification, Nov. 28, 1878.
Drawing, "
Model, "
Cert. dep., —.
1. Cash, $15, Nov. 27, 1878.
Add'l fee cert., —.
1. " cash, $20, Dec. 19, 1879.
2. Examined Dec. 15, 1879. L. M. E. Cooke.
Issue, Dec. 16, '79. Arthur W. Crossley.

4. Patented Jan'y 6, 1880.
Circular, Dec. 16, 1879.
A. W. C.
Leggett & Leggett, present.

163 1878.

Contents.

Application papers.
1. Am'd't- (A), Dec. 16, 1878.
2. Rejection, Dec. 18, 1878.
3. Am'd't (B to D), Dec. 30, 1878.
4. Letter (*v*), Jan'y 6th, 1879.
5. Argument, Jan. 8, 1879.
6. Am'd't (E), Jan. 8, 1879.
7. Letter (*v*), Jan'y 14, 1879.
8. Am'd't (F), M'ch 17, 1879.
9. Letter to office, M'ch 17, 1879.
10. Am'd't (G), April 16, 1879.
11. May 20, 1879, rejected.
12. Letter, July 3d, 1879.
13. Amend't (H), July 17th, 1879.
14. Letter (*v* 3d), July 22, 1879.
15. Letter to office, July 25, 1879.
16. Letter (final *r*, 1–3), Sept. 8, 1879.
17. Preliminary int'f'ce, Sept. 8, 1879.
18. Letter (add't'n'l ref.), Oct. 29, 1879.
19. Am'd't (I), Dec. 13, 1879.
Title: Improvement in wash-boards.
68. Laundry, wash-boards.

Ex'd: H. M. H., G. W.

164 UNITED STATES PATENT OFFICE.

JOHN M. GORHAM, of Cleveland, Ohio.

Wash-Board.

Specification forming part of Letters Patent No. 223,338, dated January 6, 1880; application filed November 27, 1878.

To all whom it may concern:

Be it known that I, John M. Gorham, of Cleveland, in the county of Cuyahoga and State of Ohio, have invented certain new and useful improvements in wash-board frames; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings which form part of this specification.

My invention relates to wash-boards, particularly to the combination, with a wash-board, of a protector constructed to bend or yield

to pressure and to return to position when said pressure is removed. This protector is to shield the person of the washer from splashing water or suds.

Protectors have been heretofore employed in connection with wash-boards, and they have been of but two general types—one wherein the protector is rigid and rigidly attached to the wash-board frame. A protector thus constructed and attached is not capable of yielding or moving from its position when the body of the operator presses against it, and it is on this account frequently objected to. The second type is when the protector is attached to the wash-board frame by a joint or pivot, and is allowed a swinging movement, but it possesses no elastic or resilient quality or function, and, when removed by pressure, has no power to return again to normal position when said pressure is removed. My invention is designed to overcome the objections and defects presented in these two old types of protectors, and as said invention broadly comprehends any wash-board protector constructed to bend or to yield to pressure and to return to position when said pressure is removed, it is apparent that I am not to be confined to any specific form or mere construction of device, inasmuch as a variety of modified mechanical structures may be adopted in embodying my said invention. I will, however, illustrate and describe one or two effective forms of device according to this invention.

In the drawings, figure 1 illustrates a wash-board and its protector made according to my invention. This figure is in longitudinal vertical section, and it represents the protector as laid down upon the face of the board as packed for shipment. Fig. 2 is a similar view of the same device, only the protector is shown as freed and sprung out into operative position. Fig. 3 is a front view of the device, as shown in Fig. 2. Fig. 4 represents a modified form of my device, wherein the protector, instead of being formed from a rigid piece and elastically pivoted to the frame, as shown in Figs. 1, 2, and 3, is made from a piece of rubber, spring metal, or equivalent material susceptible of itself yielding and returning to position, and this is rigidly fixed to the wash-board frame, as shown. Fig. 5 shows another modified embodiment of my invention, merely illustrating a different spring-coupler, C′, from that shown in Figs. 1, 2, and 3.

A is the wash-board frame, which may be of any size, description, or material. B is the rubbing surface, which may also be of any character.

C is the protector, and C′ a spring, which may be either a coupler between the protector and wash-board frame, as shown in Fig. 5 of the drawings, or the protector may be pivoted to the frame and the spring C′ act to push or pull the protector into the position illustrated in Figs. 2 and 3.

The construction of the device, shown in Fig. 4, I have already sufficiently specified in the preceding explanation of the drawings.

The operation of my device is readily understood. The spring C′, or the elastic character of the thing itself, as shown in Fig. 4, serves always to keep the protector in operative position. (See Figs. 2 and 3.) When the body of the operator presses against it it yields in

such a way as at the same time to press snugly against her person, and also to return at all times to position when said pressure is removed. It thus becomes very effective as a protector, while at the same time it is not wearing to the person or clothes of the operator.

Another peculiar feature of my wash-board is the flat manner in which it can be packed, as shown in Fig. 1 of the drawings. This is a great convenience and advantage in packing for shipment; and moreover, when thus packed, the protector is itself protected from injury to which it would otherwise be exposed. This is ac-
165 complished by locating the protector, as shown in Figs. 1, 2, and 3 of the drawings, below the crown piece and between the side pieces of the frame.

What I claim is—

1. In combination with a wash-board, a protector constructed substantially as described, so as to yield to pressure and to return to position when said pressure is relieved, substantially as and for the purpose shown.

2. The combination, with a wash-board, of a protector and a spring, said spring interposed between the wash-board and protector, and constructed to operate in retaining said protector in its open position and to return it to that position when moved therefrom.

3. In combination with a wash-board, a protector located below the crown piece and between the side pieces of the wash-board frame, and constructed to fold down into or upon said wash-board even with or below the general plane of said wash-board frame, substantially as and for the purpose shown.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JOHN M. GORHAM.

Witnesses:
JNO. CROWELL, JR.,
W. E. DONNELLY.

(Here follows diagram marked p. 166.)

167 DEF'T'S EXHIBIT P.

UNITED STATES PATENT OFFICE.

JOHN M. GORHAM, of Cleveland, Ohio.

Wash-Board Protector.

Specification forming part of Letters Patent No. 285,254, dated September 18, 1883; application filed August 22, 1882. (No model.)

To all whom it may concern:

Be it known that I, John M. Gorham, a citizen of the United States, residing at Cleveland, county of Cuyahoga, State of Ohio, have invented or discovered a new and useful improvement in protectors for wash-boards; and I do hereby declare the following to

J. M. GORHAM.
Wash-Board.

No. 223,338. Patented Jan. 6, 1880.

Fig. 1.

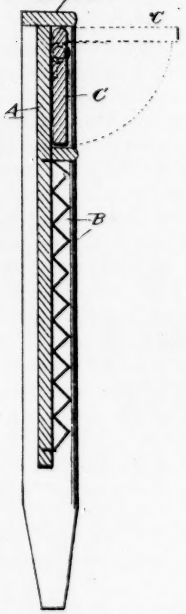


Fig. 2.

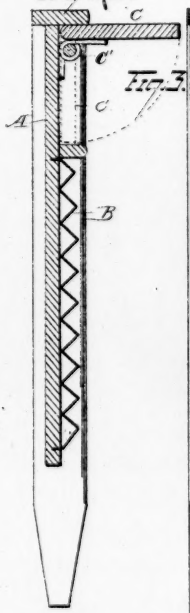
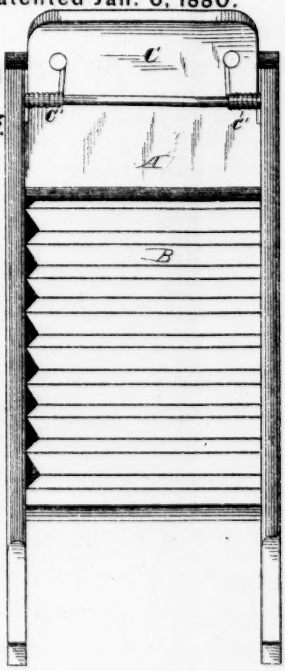


Fig. 3.



No. 399.
Sargent Valve
v.
Burgess
p. 166.

Fig. 4.

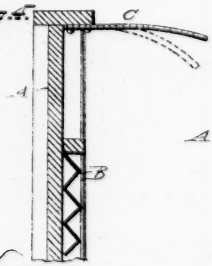
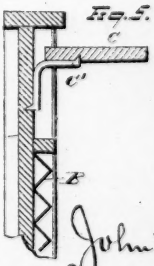
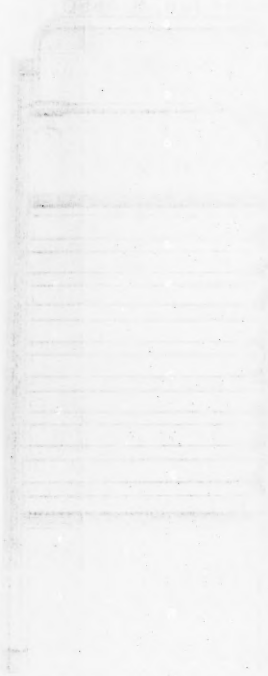


Fig. 5.



WITNESSES
E. D. Nottingham
Geo. D. Seymour

INVENTOR
John M. Gorham
By Leggett & Leggett.
ATTORNEYS.



be a full, clear, concise, and exact description thereof, reference being had to the accompanying drawings, making a part of this specification, in which—like letters indicating like parts—

Figure 1 is a plan view of the upper portion of a wash-board, the protector being bent down as packed for shipping, the same being illustrative of my invention. Fig. 2 is a view of my improved protector removed or separate from the wash-board frame, showing the parts in the same relative positions as in Fig. 1; and Fig. 3 is a perspective view of a portion of the board, the protector being raised to working position and a portion of one corner of the frame broken away to show the construction of parts.

My present invention relates to certain improvements in that class of wash-board protectors for which patent No. 223,338 was granted to me January 6, 1880, whereby such protectors are made removable or reversible and adapted for use with either single or double wash-boards; and it consists of a yielding protector having a protecting plate or board hinged or flexibly connected by springs to a holding-strip, both being separate from the wash-board frame, to which they are attached for use by means such that the protector proper may be removed readily and placed on either side of the board at pleasure.

In the drawings, A represents a double-faced wash-board, which, except as hereinafter described, may be of the usual or any desired construction. The frame of the board shown consists of side bars, *a a*, cross-strips a' above and below the rubbing-surfaces a^2, brand-board a^3, and cap or head a^4. The protector C is constructed and secured to the frame as follows: A board or plate, *c*, of any desired width and form, is connected to a holding-strip, c', of wood or other material, by means of two spiral springs, *e e*—one at either end—which are seated on rounded tenons or pins c^2, formed by any convenient cutting mechanism on the lower corners of board *c*. One end, e' (dotted lines), of each spring is pressed into the body of board *c*, so as to hold the same securely, and the other end, e^2, is passed through the strip c', and there secured by binding or clinching or in other convenient way. In fastening these ends the springs are put under tension, so that their combined strength or pressure is exerted to hold the board *c* against the side face of strip c' and in position for work when placed in the board, as illustrated in Fig. 3. Consequently the board *c* will yield or bend forward under pressure of the body thereon in use, but will reassume the proper upright position as soon as such pressure is removed. In order to hold the springs firmly in place and strengthen the pins c^2 and board *c*, zinc or other sheet-metal strips, *b*, are punched near one end and placed on the pins outside the springs, the upwardly-extending ends being bent upon and tacked to the edges of board *c* across its ends. Such strips prevent warping and splitting of the board *c* and strengthen the pins, and for these reasons I perfer to use them. The requisite strength of these parts may be secured in other ways, however, and in such case the strips may be omitted. By preference the pins c^2 are extended somewhat beyond the ends of board *c*, and the holding-strip c' is made of still greater length, so that its ends project

beyond the ends of the pins. This feature of construction is not an essential one, however, but is adopted for convenience with reference to securing the protector to the frame of the board, which is done by passing the ends of strip c' and pins c^2 into grooves, notches, or recesses i i', respectively made in or across the adjacent faces of the side bars a a next or near to the cap a^4. By making the grooves i deeper than i', a shoulder or offset is formed between them, which assists in holding the strip c' firmly. This strip c' is also made of proper width through the whole or a part of its length, so that when in place in the grooves i a bent wire, s, or an equivalent button or other fastening device may be turned upon its edge from the frame a^4, and thus
168 hold it within the grooves. The holding-strip being thus secured, the board c of the protector may be pressed or bent downward into the soap-box or upward into working position at pleasure without moving the strip, which thus forms a fastening or holding medium between the frame and board c. By turning the wire s the protector may be removed from the frame, and if grooves, notches, or depressions similar to i i' be provided on both sides of the board the protector may be transferred from side to side as occasion may require, so as to be available whichever side of the board is used. This feature of reversibility from side to side constitutes one important object or purpose of my invention, and the means by which I secure it are simple and convenient. The wire s is passed through the cap a^4, and its ends are bent in opposite directions, so that when one end is turned onto the strip c' the other end will be on the edge of cap a^4, and thus prevent catching on the garments of the user, and also prevent the wire from being drawn upward in case the hole through which it passes is made near the inner face of the cap, as in Figs. 1 and 3. It is not essential that the ends of pins c^2 should enter grooves i' in the frame, and, if desired, these grooves may be omitted, the pins being made shorter, so as to pass down between the full faces of the side bars, a. I prefer, however, the construction shown, as it affords additional support to the protector. Also, recesses or notches answering substantially the same purpose as the grooves i i' may be made by strips, pins, or cleats nailed or otherwise fastened to the inner faces of the side bars, a, without cutting the bars out. If desired, any suitable or well-known form of flexible connection may be employed between the board c and strip c', instead of the coiled springs e, and in such case one or more springs of any desired form may be used to press the board c upward into working position; but I prefer to use the springs as shown on account of cheapness in construction and adaptation to the requirements of the case. Instead of pressing the end e' of the spring into the body of board c, as above described, it may be bent against the outer face in such position as to prevent the spring from turning to destroy its tension, and other like modifications may be made in the details of construction without departing from my invention.

With my present improvement I secure a yielding or spring-supported protector possessing all the advantages of that in my prior patent referred to, and, in addition, it is removable and reversible,

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(No Model.)

J. M. GORHAM.

WASH BOARD PROTECTOR.

No. 285,254. Patented Sept. 18, 1883.

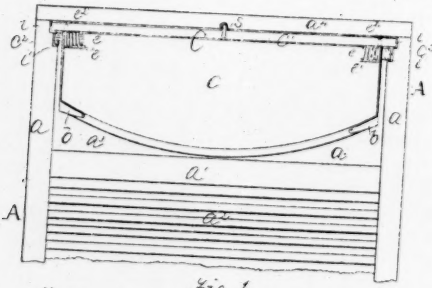

Fig. 1.

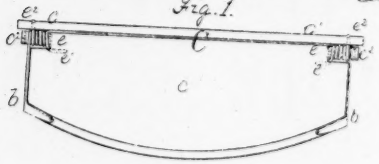

Fig. 2.

No. 399
Sargent et al vs
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Burgess
} p. 169

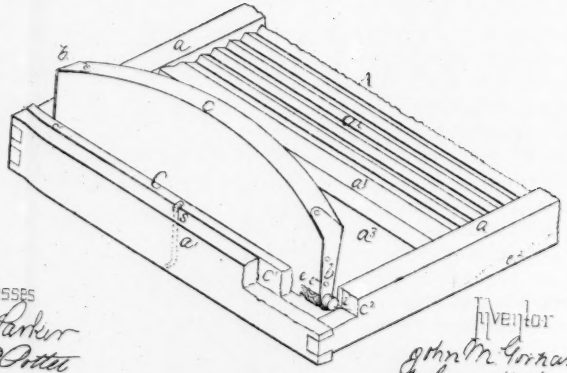


Fig. 3.

Witnesses
C. L. Parker
H. P. Potter

Inventor
John M. Gorham
by George H. Christy
his Atty.

and does not form a part of the frame proper, but is separate from and practically independent of the frame. The board can be used without it, and it may be made and sold apart from the board and readily applied to many or most of the boards in common use.

I am aware that reversible spring-protectors permanently attached to and practically a part of the frame of the board have been shown in prior patents, and I do not claim such feature of construction, broadly; but I am not aware of any removable and reversible spring-protector having the features of construction and invention which I have herein shown and described.

I claim herein as my invention—

1. A removable protector for wash-boards, having in combination a protector-board, *c*, a holding-strip, *c'*, the two having a flexible connection, and both being separate from the frame of the board, and a spring or springs for pressing and holding the board *c* upward in working position, substantially as set forth.

2. The combination, with a wash-board, of protector-board *c*, strip *c'*, and spiral springs *e*, such springs forming a flexible connection under spring-tension between the board and strip, substantially as and for the purposes set forth.

3. A wash-board having grooves, notches, or recesses across the adjacent faces of its side bars, near the cap, in combination with a holding-strip having ends adapted to fit into such grooves, notches, or recessess, and a yielding protector-board flexibly connected to the holding-strip, substantially as set forth.

In testimony whereof I have hereunto set my hand.

JOHN M. GORHAM.

Witnesses:
H. L. ROBINSON.
C. N. SHELDON.

(Here follows diagram marked p. 169.)

170 DEF'T'S EXHIBIT Q.

UNITED STATES PATENT OFFICE.

JOHN EPENETER and BERNHARD GRAHL, of Council Bluffs, Iowa, Assignors to John M. Gorham.

Wash-Board.

Specification forming part of Reissued Letters Patent No. 9022, dated January 6, 1880; original No. 127,325, dated May 28, 1872; application for reissue filed October 18, 1879.

To all whom it may concern:

Be it known that we, John Epeneter and Bernhard Grahl, of Council Bluffs, in the county of Pottawattamie, in the State of Iowa, have invented certain new and useful improvements in wash-boards; and we do hereby declare the following to be a full, clear, and exact de-

scription thereof, reference being had to the accompanying drawings forming a part of this specification.

Our invention relates to wash-boards, and it consists in the combination, with a wash-board, of a protector movably attached thereto, and constructed, by moving or swinging, to yield to the pressure upon it of the body of the operator.

In the drawings, Figure 1 is a plan view of a device according to our invention. Fig. 2 is a longitudinal vertical section thereof; and Fig. 3, a view in cross-section, taken through the board at the point of union between the protector and the wash-board frame, showing the pivotally swinging or moving connection between said protector and wash-board frame.

Fig. 3, just above mentioned, we have added in this application. Our original model embodies the construction shown in said figure, which figure was inadvertently omitted in our original application.

In the said drawings, A represents the usual frame of a wash-board, which may be of any description. B is the rubbing-surface, which, in the present instance, is provided with bristles C, extending upward and attached in the same manner as on any brush.

At the upper end of the board B, and movably attached to the frame A, is placed our protector D. This protector D is intended to shield the person of the operator from suds and splashing water during the use of the board. It is loosely or movably attached to the frame A, whereby it is susceptible of moving and yielding, as may be necessary, to pressure.

In order, further, to shield the person of the operator an apron, E, with suitable device F for attaching it to the person, may, if desired, be attached to and supplement the protector D. This apron E may or may not be used.

The protector herein shown is located so as to form a space, G, in its rear, where the soap may be maintained in a dry condition.

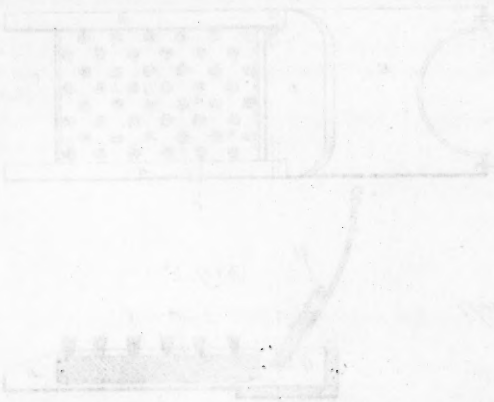
The feature of the swinging or movably-attached protector D to the wash-board frame is, so far as we are aware, novel with ourselves. It operates, as before mentioned, both as a protector to the person of the operator and as a rest to lean against, which, by its moving or yielding function, will be less wearing than were the operator to lean against a rigid and unyielding substance.

In washing with the bristle-board, as herein shown, the soap is rubbed on the brushes C C instead of rubbing soap on the clothes; therefore the soap will remain on the board until used up, whereas in other boards it will run down into the tub as soon as the washing is rubbed over it. As soon as the soap is rubbed over the bristles it forms a foam, which will remain until no more soap is in them.

So far, however, as respects the employment of our protector, we desire to be distinctly understood that we do not limit its use, narrowly, to its employment in connection with a bristle or brush board, as it is apparent that it would be equally operative in connection with boards of any description whatever.

What we claim is—

1. In combination with a wash-board, a swinging or yielding pro-



171

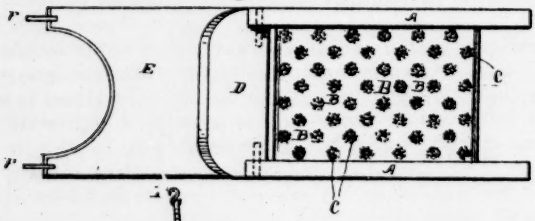
J. EPENETER & B. GRAHL,

Assignors to J. M. GORHAM.

Wash-Board.

No. 9,022. Reissued Jan. 6, 1880.

Fig. 1.



No 399.
Sargent et al. vs. } p. 1741
N. Burgess.

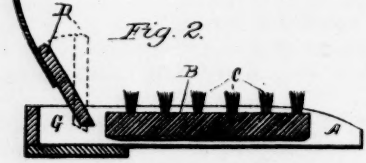
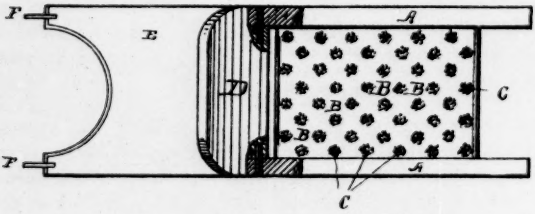


Fig. 2.

Fig. 3.



WITNESSES

Frank M. Fabes.

Willard Fracker

INVENTORS

John Epeneter.

B. Grahl.

By Leggett and Leggett. ATTORNEYS

tector attached to the upper portion of said board, and constructed to act as a protector in its various positions, substantially as shown.

2. The protector D, pivotally attached to the upper portion of the frame of a wash-board, substantially as and for the purposes shown.

3. The combination, with a wash-board, of a protector, D, located and attached substantially as described, so that a soap-receptacle, G, shall be formed behind or above said protector, substantially as and for the purpose shown.

4. The combination, with a wash-board, of a protector, D, and supplemental apron or flexible protector E, substantially as and for the purpose shown.

5. The protector D and supplemental apron or flexible protector E and attaching device F, combined substantially as and for the purpose shown.

In testimony whereof we have hereunto signed our names this 21st day of February, A. D. 1879.

JOHN EPENETER.
BERNHARD GRAHL.

Witnesses:
PETER WEIS.
HENRY HANSON.

(Here follows diagram marked p. 171.)

172 And afterwards, to wit, on the 24th day of April, A. D. 1885, this cause having been called for argument and the parties being ready, the same was argued by the counsel for the respective parties on the pleadings and proofs, and not being fully advised in the premises, the court takes further time to consider thereof.

And afterwards, to wit, on the 8th day of May, A. D. 1885, the court enters the following decree, to wit:

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. April Sess., 1883.

SARGENT *et al.* *vs.* BURGESS. } No. 24.

173 And now, to wit, this 8th day of May, A. D. 1885, this cause having come on to be heard upon pleadings and proofs and having been argued by counsel for the respective parties, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the bill of complaint herein be, and the same is hereby, dismissed with costs, to be taxed by the clerk.

174 United States Circuit Court, Eastern District of Pennsylvania.
April Sess., 1884. In Equity.

JAMES T. SARGENT and JOHN M. GORHAM, Administrators of the Estate of John H. Gorham, Deceased, Copartners Doing Business as Gorham and Sargent,
vs.
EDWIN K. BURGESS. } No. 24.

And now, August 17th, 1885, J. Snowden Bell, Esq., of counsel for complainants, appears in open court and prays an appeal to the Supreme Court of the United States from the decree of this court dismissing the bill of complaint, entered May 8, 1885; whereupon the same is allowed, with security in the sum of five hundred dollars.

175 (Endorsed:) No. 24. April sess., 1883. Circuit court U. S., eastern dist. of Pa. Sargent *et al. vs.* Burgess. Order allowing appeal to Supreme Court U. S. Filed Aug. 17, 1885.

And afterwards, to wit, on the 21st day of August, A. D. 1885, the appellants, by their counsel, come into court here and deposits the sum of five hundred dollars in the registry thereof as security.

176 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of James T. Sargent *et al. vs.* Edwin K. Burgess, No. 24, April session, 1884, in equity, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this fourteenth day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[Seal U. S. Circuit Court, E D. Pennsylvania.]

SAMUEL BELL,
Clerk of C. C.

[Endorsed:] No. —. —— sessions, 188–. Circuit court United States, eastern district of Pennsylvania. Certified copy.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 399. James T. Sargent and John M. Gorham, administrators of the estate of John H. Gorham, deceased, &c., appellants, *vs.* Edwin K. Burgess. Filed October 15, 1885.

IN THE

Supreme Court of the United States.

No. 127, OCT. TERM, 1888.

JAMES T. SARGENT and JOHN M. GORHAM, Administrator, Complainants and Appellants.

VERSUS

EDWIN K. BURGESS, Defendant and Appellee.

IN EQUITY.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF OF COUNSEL FOR APPELLANT.

GEO. H. CHRISTY,
J. SNOWDEN BELL,
of Counsel for Appellant.

SMITH BROS. FRANKLIN PRINT, 78 DIAMOND STREET, PITTSBURGH, PA.

IN THE

Supreme Court of the United States.

No. 127, OCT. TERM, 1888.

JAMES T. SARGENT and JOHN M. GORHAM, Administrator, Complainants and Appellants.

VERSUS

EDWIN K. BURGESS, Defendant and Appellee.

IN EQUITY.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

BRIEF OF COUNSEL FOR APPELLANT.

STATEMENT OF CASE.

This is a Bill in Equity brought by the Appellants, Complainants below, to enjoin the Appellee, from the use of an invention patented to John M. Gorham, January 6th, 1880, by Letters Patent No. 223,338, for an Improvement in Wash Boards.

Appellants are engaged extensively in the manufacture of these, among other, wash boards at Cleveland, Ohio. In

fact this is their sole business. An infringing wash board is sold by Appellee. Hence the suit.

The invention is easily understood from the Patent (Record pp. 40-42,) It relates to an improvement in an article of universal use, and *because* the use is universal, the invention is valuable. It consists in adding to the ordinary wash board an attachment which is adapted to protect the person or clothes of the user from the splashing of the suds, while the washing is being done, and *so* attaching it that while in an operative position, into which it is readily shifted, it will do its proper work as a protector, and also so that it can be shifted, when packing for storage or shipment, or after washing is done, into another position where it is itself protected from injury.

In every wash board of ordinary construction there is a vacant space above the rubbing sheet or surface proper, below the crown or cap piece, and between the side bars. As will presently be seen, protectors had been attached in this vacant space to the wash board prior to the date of the Gorham patent, but they had not been constructed and attached in such manner that when not in actual use the protector could be packed, nested or folded into that space, so as to be itself protected thereby against injury.

Gorham was the first to do this. In his Patent he shows and describes this, among other features of the invention. His first and second claims relate to these other features, which, not appearing in Defendant's board, are not in controversy.

The present suit is brought on the third Gorham claim, which reads as follows:

"3. In combination with a wash board, a protector located below the crown piece and between the side pieces of the wash board frame, and constructed to fold down into or upon said wash board even with or below the general plane of said wash board frame, substantially as and for the purpose shown."

The scope or meaning of the claim, or in other words, *the invention* summed up therein, will be considered in discussing the question of infringement.

Defendant and appellee set up by answer, each and nearly all the defenses usually resorted to in patent cases, as 1st. Non-infringement; 2d. That appellants' patent is void, (a) for errors on drawing which make it inoperative (b) because anticipated, and (c) because not patentable.

These defenses will be separately considered at the proper time.

Replication was filed; proofs were taken on both sides; the case was duly argued, and after consideration, the bill was dismissed, and appeal taken.

ERRORS OF THE COURT BELOW.

No opinion was filed,-only a very brief decree being entered, (Record, p. 125). Nor does the Record anywhere disclose which of the several issues it was, on which the case was decided adversely to complainants. Hence I am unable to cite any but the general error of an erroneous decision on the merits. And under such a record, as I understand the practice, the entire case now comes before the Court for review.

ARGUMENT.

COMPLAINANTS' TITLE.

This is pleaded at length in the Bill (Rec. p. 2), and the title as pleaded is fully proven by complainants' Exhibit "Assignments" (Rec. pp. 42–45). But as it is not understood that the title will be disputed, it need not be further discussed.

INFRINGEMENT.

Defendant has been selling a wash board with protector, made under Patent No. 255,555, granted to C. H. Williams, March 28th, 1882, something over two years sub-

sequent to the Gorham. One of these wash boards is in evidence as "Complainants' Exhibit Wash Board."

The Williams' patent will be found at pp. 88–90 of Record.

Sales are proven by the testimony of Fenlin and Burgess (Rec. pp. 10–12), and Mr. Brevoort is examined by complainants, as an expert on the issue of infringement (Rec. pp. 12–15).

Defendant denies infringement, and examines Mr. Stocking as his expert. That the two protectors, the Gorham and Williams, have some features of difference, is not denied. An infringer rarely duplicates the patented mechanism. Mr. Brevoort, in his testimony above cited, refers to these differences, and gives, as is believed, good and sufficient reasons for his opinion that they are immaterial, and that the Williams board embodies the invention of the third Gorham claim.

Put the two wash boards side by side, read the Gorham third claim with reference to both, and it will be found to fit either equally well. But the points involved can perhaps be best got at, by taking up the enumeration by defendants' expert of the differences which he finds to exist. If we show that these are some trivial, some immaterial, and that the rest are imaginary, this part of the case will be disposed of.

Mr. Stocking, in answer to Q. 25 (pp. 51, 52), compares the Williams board with the Gorham patent generally, *not* with the third claim, which is the only material matter, and in this way gets at eight features of difference which he seems to regard as material. These may first be disposed of.

First, he says, that "the Williams protector is not yielding—it is rigid."

If by "rigid" he meant immovable, his statement is not true. The third claim of the Gorham patent says nothing directly nor by implication about any yielding or unyielding capacity. That element of the invention enters

into the subject matter of the first claim, but not of the third. A capacity to "fold" is all that the third claim calls for in this regard; and that capacity is found in the Williams protector, within the meaning of the third Gorham claim.

Second, he says, the Williams protector "is not resilient."

But the Gorham third claim says not a word about resiliency. *That* constitutes an element of the second claim, not of the third.

Third, he says, "it is not a pivoted or foldable protector."

This statement is not true. The Williams protector *is* pivotal, by means of the arms *E*, on the pivots *d*, and it *does* fold down between the side bars of the frame, and beneath the top piece. It folds in an edgewise position instead of flatwise, but the folding is there. The immateriality of this difference is elsewhere discussed.

Fourth, he says, "it has no pivots."

Neither is this true. The pivots on which the Williams protector turns, are marked *d*, in his patent.

Fifth, he says "the protector is not elastically pivoted."

This is merely a repetition of the first and second points, and may be similarly disposed of.

Sixth, he says, that "the arms riding the pins, are not the equivalent of pivots."

Nobody says they are. The pivots are there,—marked *d*,—the arms turn on the pivots, and thereby the protector gets its folding capacity.

Seventh, he says, that "the protector in the Williams board is not located below the cap piece, but upon the cap piece, nor between the side frames, but above them. When located between the side frames, it is not a protector."

This is merely a question of names. Both the Gorham and Williams protectors are capable of being folded down below the cap piece and between the side frames, and when so folded, neither is in operative position to act as a

protector; but both are in convenient position to be put into use as protectors, whenever such use is required. A carriage curtain is a curtain even though, as is usual in pleasant weather, it be rolled and strapped up, or be detached, folded up, and stowed away under the carriage seat, and it is properly called a curtain, even when so folded or detached and stowed away. So a wash board protector does not lose its distinctive character, *nor its name*, by being temporarily folded into other than an operative position, provided its capacity for use for the purposes for which it was made, or to be restored at pleasure to an operative position is not destroyed; and,

Eighth, he says that "the Williams protector is not constructed to fold down into nor upon the wash board frame."

What he means by this statement he does not explain. As he states it, it is untrue, as will appear by examining the wash board itself. *Oculis subjecta fidelibus.*

But as the witness is next asked (p. 52, Q. 26) to specify the material differences between the Williams protector and the Gorham third claim, we can soon see what these amount to.

First, he says, "the Williams protector is not located below the crown piece, but upon it."

This comes as near to "hair-splitting" as it is possible to get in a patent case. But as a matter of fact, when the Williams protector is put into an operative position, its inside, or lower face, which receives the splash from the wash tub, is *below* the inside or lower plane of the crown piece. And this being true, it is wholly immaterial whether the protector while so operating, be supported on the edge of the crown piece, as in Williams, or abut against its lower side or edge, as in Gorham. We might, perhaps, admit (though we do not) that a protector arranged so that when in operative position it should be *entirely above* the crown piece, and *wholly outside* of it, would not be within the

terms of the Gorham third claim, but such an arrangement would be exceedingly objectionable, in that it would increase the length of the wash board at its upper end, increase the distance that the washerwoman would have to stoop over, in order to do her work, and thereby make her work,—already hard enough,—still more arduous. Such a mechanism as we are now talking about, to be at all useable, must be so arranged as not to increase the length of the wash board, and this, it may for the present be admitted, is what is meant in the Gorham third claim, when it says, "located below the crown piece." Defendant's protector has its operative or splash-receiving face located below the crown piece, and thereby this element of the Gorham invention is clearly and unquestionably incorporated into defendant's protector.

But as a matter of fact, the *location* referred to in the Gorham third claim, is location when packed for storage or shipment, or for protection from the injury to which it would otherwise be exposed. The Gorham specification in describing this feature of location, presents this as the element of advantage or utility in view.

Thus it says:

"Another peculiar feature of my wash board is the flat manner in which it can be packed, as shown in Fig. 1 of the drawings. This is a great convenience and advantage in *packing for shipment;* and moreover, when thus packed, the protector is itself *protected from injury to which it would otherwise be exposed.* This is accomplished by locating the protector, as shown in Figs. 1, 2 and 3, of the drawings. below the crown piece and between the side pieces of the frame."

Could anything be clearer than this, to wit: that the location referred to is such a location as will best secure protection from injury? And that for this purpose, Gorham so arranges it that when not in use, it can occupy the vacant space or cavity which in all wash boards is found beneath the crown piece, and between the side bars? It is thus folded into that vacant space for shipment, and after the

washerwoman is through with her day's washing, she can fold it back into such vacant space, hang her wash board up on the wall, or lay it away, and her "protector" is thereby, in the language of the Gorham patent, "*protected from injury to which it would otherwise be exposed.*"

Hence, as we read the Gorham third claim, it means—and we follow the exact language of the claim:

"In combination with a wash board, a protector located [when packed for shipment or for protection from injury] below the crown piece and between the side bars of the wash board frame, and constructed to fold [after being used or as occasion may require] down into or upon the said wash board even with and below the general plane of said wash board frame, substantially as and for the purpose shown."

The gist or substance of the invention of this claim,—the thing invented,—consists then in the utilization of this otherwise vacant space or cavity between the side bars and beneath the crown piece, by the location of the protector therein, in such manner that, after being removed therefrom, as it must be when in actual use, it may be returned thereto, so that, when not in use, it may at all times be "protected from injury to which it would otherwise be exposed."

This is believed to be a reasonable and fair statement of the invention, and of the subject-matter of the claim *That thing* was new with Gorham. Defendant's wash board contains it. And this would seem to be the whole case.

But returning to Mr. Stocking's statement of differences. His second is, that "the Williams protector is not located between the side pieces of the wash board frame."

This amounts to no more than his first statement of difference. It relates only to what is meant by "located." The fact is that when in position to be "protected from injury," it *is* "located between the side pieces of the wash board frame," and is so constructed as to be folded back to that location when the washerwoman is through with her washing. For these reasons, and as more full stated above while discussing his *first* alleged difference, it is believed

that this second alleged difference is of as little account as the first, and that both are wholly irrelevant, either to the invention or to the claim.

Mr. Stocking makes two other points of difference, as follows:

"Third.—Nor is it—that is the protector—constructed to fold down into or upon said wash board, even with or below the general plane of said wash board frame."

"Fourth.—When placed within the frame, Williams' protector projects above the frame."

These two points amount really to only one. They are based on the fact that in the Williams board when the protector is folded down beneath the cap piece and between the side bars, its width is such that its upper or outer edge projects a little above the general plane of the wash board frame.

It should, we think, be sufficient reply to this point of difference to cite the well-known legal maxim: *De minimis lex non curat.* Though a small portion of the protector be outside the terms of the claim, that fact is too trivial to affect the real question as to where the rest of it is. And while it is true that the upper or outer edge of defendant's protector does so project slightly, it is equally true that its lower edge—its body part—or enough of its width to constitute a protector of practical value and utility, is, when folded down, as a matter of fact, below the general plane of the crown piece and side bars. And we contend with confidence that so long as in defendant's board, this otherwise vacant space or cavity below the crown piece and between the side bars, is utilized as a location for any material, or considerable or substantial part of a folding or foldable protector, whereby it is wholly or in part protected from injury, when not in actual use, so long and to that extent, the Gorham invention, as set forth in this third claim, is made use of, and his patent is infringed. And we contend that this is especially so, where as here, there is not enough of the edge of the protector pro-

jecting above the level of the side bars to interfere at all with that folding which facilitates packing for storage, transportation, or safety from injury.

And to make this the more clear, who but Gorham taught this defendant, or his vendors—who but Gorham taught the world, that this vacant space referred to could be so utilized not only as a place wherein a protector could be attached, but also as a place or space in which it could be seated or nested, as in a pocket,—also as a space from which it could be removed *without detachment*, and as a space in which it could be replaced, reseated, or renested after a days washing was done? And after Gorham did it,—showed the world how to do it, and patented it, so as to give to the world the benefit of *that thing* after his right to it expires, then it was comparatively easy for Williams or anybody else, by slight modifications or changes of form or means of attachment, to embody Gorham's invention in a less perfect but still useable and advantageous construction. The question is, has Williams utilized the vacant space referred to in substantially the manner in which Gorham describes and claims it? Is any material portion of Williams' protector, when folded down, found to be beneath the general plane of the wash board frame? If it is, then Williams is clearly chargeable with having appropriated to that extent *the thing* which Gorham invented and patented. And that he has done so, we think will clearly appear from the considerations above presented, along with an inspection of the Williams board and the Gorham patent.

We do not observe that Mr. Stocking has said,—and he would be in error if he did,—that as regards this third claim, there is any material difference between the edgewise folding of the Williams protector, and the flatwise folding of the Gorham. In so far as relates to the useful work done, there is obviously no difference. The cavity or space between the side bars and beneath the crown piece, is in each board utilized in substantially the same way, by a folding movement

of the protector into it, on the pivotal points by which permanent connection is made with the board. And whether such folding movement be edgewise, as in the lapping leaves of a lady's fan, or flatwise, as in folding a sheet of paper, is wholly immaterial. The two are and have long been known in the articles referred to, as mechanical equivalents each of the other.

And right here, a word or two as regards the importance of nesting the protector in the cavity or space beneath the crown piece. It is well known that the trade in wash boards is very large. Like pins and needles, they are indispensable articles of domestic use, and must be made by thousands and shipped in packages. A protector which projects materially outside the general contour of the package or bundle, is liable to be broken by the rough usage incident to car transportation, to say nothing of increase of space occupied in the car, and consequent increase of shipping rates, and breakage is equivalent to destruction. Also after a day's work is done, or from Monday to Monday, a protector which cannot be folded away, so as to be brought substantially inside the general contour of the board, is liable to be injured by knocks or by falling, and so destroyed for use; whereas, if folded away, it would be entirely protected from injury. For these reasons alone, it is believed that the invention is a meritorious one, and the defendant having adopted it, is entitled to the protective remedy of the Court.

And it may be added as a confirmatory fact in proof of the correctness of this view, that the Williams patent sets forth the advantage above referred to in the terms of the Gorham patent, when it says (page 1, col. 2, lines 86–88):

"It will also be observed that as the protector can be *folded into the board*, it takes *no additional room in packing*."

Hence it not only is a fold in fact, but defendant's patentee uses that name in describing its manner of use, and still further he assigns to it identically the same advantages

in use, which constitute the chief distinctive features of the Gorham third claim, first in folding "*into* the board," instead of onto it or outside of it; and second, in that being so folded, "it takes no additional room in packing." And these facts being so, it would appear to follow as a necessary conclusion, that defendant's board is an infringement.

ALLEGED ANTICIPATIONS.

As anticipatory of the Gorham invention, Mr. Stocking refers to four prior patents, and by numerous misstatements of fact, and erroneous deductions of law, endeavors at some length to show that they each contain the invention in question.

Without following his interminable argument at length, it may, we think, easily be shown that as a matter of fact he is wrong in every case, and that this part of the defense is utterly without merit.

The four patents referred to are:

1st. Barnes, No. 8,161, of June 17th, 1851.
2d. Epeneter & Grahl, No. 127,325, of May 28th, 1872.
3d. Cole, No. 146,433, of January 13th, 1874, and
4th. Frike, No. 150,315, of April 28th, 1874.

These may be conveniently considered in the order named.

1st. Barnes, No. 8,161, of June 17th, 1851. It is shown in Exhibits *E* and *F*, the former being the patent, and the latter the model. (For the patent, see Rec. pp. 90, 91.)

In this patent, the ordinary crown piece, brand board, and the upper portions of the side bars are made separate from the rest of the wash board, and the lower ends of these side bars are pivotally connected with the lower or leg portions of the side bars. This is done in order that the wash board proper may be reversed in position, or turned over, so that the back (see Fig. 2) may be used for washing fine or delicate fabrics, and also so that in doing ordinary washing, one corner

or end of the garment or article to be washed, may be locked or caught as at *N*, between the upper end of the rubbing board *A*, and the brand board *B*, and while so held or locked, may be the more easily cleansed by the use of the corrugated hand rubber shown in Fig. 3. And that is absolutely all there is of it. It is simply an ordinary wash board, made in two parts instead of in one—and the two parts joined together. The crown piece of this wash board is no more a protector when joined to the rest of the structure, than it would be if made rigid, as is usually done. The crown piece of every wash board affords *some* protection, but the invention in question calls for the protection of an *added* protector,—of one which shall be auxiliary to the crown piece,—which shall supplement, add to, or increase, by virtue of its presence and efficiency, the protection desired, and one which, while doing this, shall be capable of being folded into the cavity or space beneath the crown piece and within the side bars, or into the space where the letter *B* is seen in Fig. 1 of the Barnes patent.

This bare statement of the facts makes it too clear to require argument, that the Barnes patent has no protector at all, as that term is understood in the art, and in fact, has no device of any kind capable of being folded anywhere, and certainly nothing that can by any possibility be folded or otherwise moved into the space *B* of Fig. 1.

A wash board which has *no* protector, certainly cannot anticipate a patent for a wash board which has one.

2d. Epeneter & Grahl, No. 127,325, of May 28th, 1872, shown in Exhibits *G* (Rec. pp. 91, 92) and *H*, patent and model, and an improperly enlarged reissue of which is shown in Exhibit *Q* (Rec. pp. 123, 124).

So far as we are aware, these patentees were the first to add a protector of any kind to a wash board of any kind. In their original patent, they show their protector *D*, *E*, mounted, or placed with one edge in the vacant space or cavity below the crown piece, but it is neither shown nor described

as having any folding capacity whatever. In fact, as represented in the drawings, it is incapable of being folded at all. No pivotal attachment is described, shown, or even hinted at; and as the protector *D*, has its lower edge beneath the top level of the side bars, and as it is as long as the entire wash board frame is wide, it obviously could not, even if pivoted, be folded down to a horizontal position in either direction, and least of all could it be folded into the vacant space or cavity beneath the crown piece, and between the side bars. It is too long and too wide to be put into that space, even if it were disconnected. Hence it will be seen that the idea, thought or plan of utilizing this otherwise vacant space or cavity as a receptacle for a protector, by folding it therein, so that it should be thereby protected from injury, when not in actual use, was *not* invented by Epeneter & Grahl, is *not* found in their patent, either as originally granted, or as reissued, nor in their model. And even if it were in the model, such fact would not avail the defendant, for the reason that the mere making of a model is not a construction and use of an invention, within the meaning of the Act of Congress.

Cox vs. Griggs, 2 Fisher, 174, 176, 177.
Howe vs. Underwood, 1 Fisher, 160.
Many vs. Sizer, 1 Fisher, 17, 20.
Ransom vs. Mayor, 1 Fisher, 270.

The Reissue (Exhibit Q), taken out in the palmy days of reissues, before the date of the *Miller and Bridgeport* decision, does not even venture to describe or claim any folding capacity. It enlarges the invention to the extent of giving to the protector shown and described, the element of a pivot, and gives it a short swinging or yielding capacity, but as it was absolutely incapable of being folded at all onto anything, no such claim is made for it, nor is it even pretended to have that capacity.

Hence, while it may perhaps be admitted that Epeneter & Grahl made a step forward in the direction of the Gorham

invention, it is equally clear that they stopped short of attaining that which Gorham did. They failed to construct a protector which was capable of being folded into the otherwise vacant space beneath the crown piece of the wash board, and between the side bars; and having so failed, their patent fails to have any effect as an anticipation of the Gorham third claim.

3d. *Cole*, No. 146,433, January 13th, 1874, shown in Exhibits *I* and *K*, Rec. p. 93.

In this patent the side bars, *b*, are made double-ended—that is, both ends are leg-shaped, so that the rubbing-face may be reversed or turned end for end, accordingly as heavy or light washing is to be done on the crimps *a*, the long sloping sides of the crimps being used for one purpose, and the short abrupt sides for the other. In order, then, to be able to make such reversal, or to change the ends, the inventor made his cap or crown piece and his brand board in a separate structure and by the use of radial arms pivoted them to and half way between the ends of the side bars, so that the lower or leg-end of the wash board, whichever that might be, being inserted in the was-tub, the cap or crown piece might be brought into suitable working position at the other or upper end. And when so organized, we have simply a modification of Barnes above referred to. We have simply and only the ordinary crown piece and the ordinary brand board, doing the same protective work which the crown piece of the ordinary wash board does, no more and no less. And as above stated in reference to Barnes, we have no added, supplemental, or auxiliary protector, which shall supplement, add to or increase the protection sought for, nor have we one which, while doing this, shall be capable of being folded into the cavity or space beneath the crown piece and between the side bars. And hence this Cole patent does not contain the Gorham invention.

4th. *Frike*, No. 150,315, April 28th, 1874, shown in Exhibits *L* and *M*, Rec. pp, 94, 95.

Mrs. or Miss Frike,—for the patentee seems to be a woman from the rural districts of Illinois—removed the crown piece from her board entirely, filled up the entire space beneath where the crown piece ought to be, by putting therein a square shaft *F*, pivoted this shaft to the side bars, at the angle farthest from the usual position of the crown piece, and then onto this square shaft *F*, she secured what she calls "a tilting angle plate," marked *H*. This mechanism she so arranged on a double-faced wash board, that when one side or wing of this tilting angle plate *H* should lie flat against the outer back edges of the side bars, the other side or wing of *H* should stand at right angles thereto, and so act as a protector. When the wash board was turned over, so as to use the opposite face of the board for washing purposes, the shaft *F* would oscillate on its bearings, the wing of *H*, which would then be on the lower side, would come against the outer back edges of the side bars, and the other or what would then be the front wing, would stand up as a protector. The idea or construction was apparently novel, theoretically good, and practically worthless; but whatever else may be said of it, it does not contain the invention of the Gorham third claim. Because,

1st. The available space into which a protector *could* be folded, is, in the Frike patent, so fully occupied by the large shaft or block *F*, that practically there is not sufficient room left for the in-folding of a protector.

2d. Considering the "tilting angle plate" *H* of the Frike patent as a protector, no part of it at any time or under any circumstances comes or can possibly come between the side bars, nor enter any space beneath the crown piece, if the ordinary crown piece were there. When the wing or edge which may be on the lower side of the board is swung or folded inwardly, or toward the board, it comes against or rests against the outer back edges of the side bars, as shown in Fig. 1 of the Frike patent, and the other wing projects perpendicularly to the opposite side of the board, its

outer edge standing at the maximum distance therefrom permitted by its pivotal connection to the legs. It does not and cannot enter at all, into any cavity, vacant space or pocket of any kind. Both wings stand always outside of and beyond the general contour or extreme outer dimensions of the board. Hence there can be no saving of space in packing for shipment, and also, the protector itself is not and cannot be folded away at all, nor anywhere, so as to be itself protected, as against the knocks and kicks to which all wash boards are subject at the hands,—or rather feet,—of the average Irish domestic.

In view of these facts, it seems at least reasonably clear that Mrs.—or Miss—Frike did not make the invention now in controversy. The idea, thought, conception, plan or organization by which the protector could be folded into any vacant space, cavity or pocket of any kind inside the general contour of the wash board, so as thereby to be packed for shipment, or folded away to escape injury, constituted no part of her invention. She did not get that far. She was, perhaps, on the road to it, but stopped considerably short of it. So far as she was concerned, that field of invention was still open to Gorham. Hence not having any available space into which a protector could be folded, and not having a protector which can be folded at all so as to occupy a position or be "located" beneath any crown piece, nor between the side bars, it is submitted that the Frike patent is totally irrelevant.

Defendant also offered in evidence, but without any expert testimony in reference thereto, a copy of the Stevens patent No. 222,846, of December 23d, 1879. Rec. pp. 95-6. The protector it describes consists of a U-shaped wire frame, with a waterproof apron sewed thereto. The ends of the wire frame are secured to the edge of the wash-tub one on each side of the wash board. The wash board, of ordinary construction, being placed in the tub, inside the protector, the apparatus is ready for use. Obviously a mechanism of

this kind, sustains no relationship whatever to the present invention.

THE PATENT OFFICE RECORD IN GORHAM'S APPLICATION.

In the light of the above, we are now prepared to consider the facts by means of which Mr. Stocking attempts to show that Mr. Gorham's third claim is to be otherwise limited or construed than as we have above contended.

On page 59 of Record, Q. 46, he is asked for any facts to show that Mr. Gorham "has no claim covering any protector which is capable of being folded *flat* for packing purposes."

As appears above, we do not allege that the claim now in question covers any and all *flat*-folding protectors, but only protectors capable of being folded into the cavity, pocket or vacant space referred to. Hence the question is not a material one.

But we go further and allege that there is nothing in the Patent Office action inconsistent with such construction of the claim, and in fact, that as soon as the invention was thus defined in the claim, the patent was promptly granted, and that thereby the Patent Office adjudicated that such a construction or combination was his.

Taking the facts as Mr. Stocking states them, what are they?

1st. That when Gorham first went to the Patent Office, he made a claim covering a protector adapted "to be moved, turned or folded *out of* its normally operative position."

This was too broad, and he was of course rejected on Epeneter & Grahl, which, as we have already seen, had a protector which could be moved out of its normally operative position.

He then amended, so as to limit himself to protector which "when not in use may be folded *parallel against* the wash board."

The Patent Office said again that this feature was found in Epeneter & Grahl. We do not think it is; but Gorham assumed that the Patent Office was right and erased the claim. After various amendments, which are not of sufficient importance to justify Mr. Stocking in giving anything but their dates, he inserted the present third claim, making the chief element of novelty to depend on the capacity,—not to fold *out of* or away from a normally operative position, as he first stated it,—nor to fold into parallelism with the wash board as he next stated it,—but "to fold down into or upon said wash board, *even with or below the general plane* of said wash board frame."

This was his invention; and as soon as he learned how to state it properly, the Patent Office, by its action, said to him: "That is new and useful. It belongs to you, and you can have a patent for it." And the patent was at once allowed and issued.

A better, *cleaner* Patent Office record can seldom be found.

THE INACCURACIES IN THE GORHAM DRAWING.

Considerable stress has been laid by the defendant's witness, Stocking, upon certain palpable, but, as we maintain, immaterial inaccuracies in Figs. 1 and 2 of the Gorham patent sued on, and, ignoring the well-settled rule, that the drawings and specification must be taken together, and the drawings considered in connection with the specification, each serving to elucidate the other, Mr. Stocking produces a model (Defendant's Exhibit A) alleged to be in accordance with Fig. 2 of the Gorham drawings, in support of his assertion that said figure represents an inoperative construction.

In *Am. Hide & Leather Splitting & Dressing Machine Co. vs. Am. Tool & Machine Co.*, 4 Fish. 304, Shepley, J., thus defines the character of drawing required in a valid patent:

"Now, it is not necessary, in order to make a patent valid, that the patentee should so make the drawings in his patent that they could be used for working drawings, or that a machine made in accordance with the exact scale of the drawings which accompany the patent in the Patent Office, either in England or in this country, should be an operative machine. It is necessary, however, that the patentee should so describe his invention that a mechanic skilled in the art to which that invention relates, would be able by the aid of the description and drawings of the patent to embody that invention in a practical, operative, efficient and effectual form. That is all that is necessary, and, therefore, if you find, upon a critical examination of these drawings, that there are some slight differences in distance, or in proportion, which, if exactly carried out upon the same scale, in a machine constructed according to the patent, would require modification in order to make the machine operative, that does not affect the question."

It will be obvious upon an inspection of the drawing of Patent 223,338, considered as it should be, in connection with the descriptive matter of the specification, that Figs. 1 and 2 are inaccurate and erroneous in the following particulars: (*a*) in showing the protector in full lines in Fig. 1, and in dotted lines in Fig. 2, as folded *flat* against the branding board, whereas the protector would, when folded in, be inclined outwardly and upwardly sufficiently to clear the rod and spring behind it; (*b*) in showing the end portion of the springs as abutting closely against the lower or inner side of the protector, so as to bend the same against the cap piece, whereas a very slight space should be shown between the spring and protector, corresponding with the degree of slackness or play necessary to admit of the protector being turned down into the cavity in which it is adapted to be folded.

The drawing is erroneous to this extent and no further; no members which should be shown are omitted, and none are shown but those which rightly appertain to the structure described in the specification. The errors are precisely what

Judge Shepley specifies as immaterial ones; "slight differences in distance or in proportion, which, *if exactly carried out upon the same scale*, in a machine constructed according to the patent, would require modification to make the machine operative."

Mr. Stocking's assumption that the dotted indications of the springs in Fig. 1, are intended to represent pivots, is wholly destitute of foundation, and so palpably absurd that we deem it unworthy of discussion.

The sketch marked E. B. S., offered by defendant's witness, Stocking, in his answer to X Q. 102. (Rec. p, 83,) agrees substantially with that marked H. L. B., offered by complainants' witness, Brevoort, in answer to X Q. 117, (Rec. p. 23). These sketches similarly illustrate the trifling modification of Fig. 2 of the Gorham patent, which would be necessary to bring that figure into correspondence with the certified copy of the model filed with Gorham's application, and, as we believe, conclusively demonstrate the trivial and immaterial character of the errors of the drawing. Reading the drawing with the specification, the errors are apparent upon its face; they are not such as would deceive or mislead any one seeking information from the patent, and no mechanic skilled in the art to which Gorham's invention relates, would find in them any difficulty in embodying the invention in a practical, operative and effectual form.

Kneass vs. The Schuylkill Bank, 1 Robb 310.
Brooks et al. vs. Bicknell et al., 2 Robb, 130.
Doughty vs. Day, 9 Blatchf. 263.
Hamilton vs. Ives et al., 3 O. G. 31.
Union Paper Bag Co. vs. Nixon, 4 O. G., 32.

That the errors referred to are wholly immaterial and insufficient as an objection to the validity of the Gorham patent will abundantly appear:

1st. From the comparison of the sketches just referred to.

2d. From the testimony of appellants' expert, Brevoort, (Rec. pp. 17-19, Q. 108, 109, 112; p. 32, Q. 174).

3d. From the testimony, (*incautiously given,*) of defendant's expert, Stocking, that he could make the Gorham board from the Gorham patent, and also stating how he would do it. (Rec. pp. 60, 61, Q. 47); and,

4th. From the testimony of Sargent, to the like effect. (Rec. p. 33, Q. 180-182).

PATENTABILITY.

Defendant denies that the Gorham patent describes or claims any patentable invention, in view of the state of the art as disclosed by the patents already discussed.

I do not deem it necessary to discuss the multitudinous cases which might be cited one way or the other. The books are full of them. It is undoubtedly essential that the patent should disclose *some* invention. How much, is immaterial, but there must be some.

That there is *some*, and in fact *ample* invention in the third claim of the Gorham patent, may, I think, be easily shown.

In the case of *Smith vs. Nichols*, 21 Wall, 112, this Court formulated the following rule; (p. 119):

"But a mere carrying forward or new or more extended application of the original thought, a change only in form, proportions, or degree, the substitution of equivalents, doing substantially the same thing in the same way by substantially the same means with *better* results, is not such invention as will sustain a patent."

This, substantially a new rule, was adopted and affirmed in *Atlantic Works vs. Brady*, 107 U. S. 192.

And when the case of *Morris vs. McMillin*, 112 U. S. 224 came before the Supreme Court, the case last cited was reaffirmed, and the *McMillin* patent was held to be within the rule.

And the same rule is stated in another form in the addi-

tionally cited case of *Pa. R. R. vs. Locomotive Truck Co.*, 110 U. S. 490, as follows:

"The application of an old process or machine to a similar or analogous subject, with no change in the manner of application and no result substantially distinct *in its nature*, will not sustain a patent, even if the new form of result has not been before contemplated."

And this leads us to the distinction which I draw between the now pending case and the case above cited, and which distinction is, as I hope to make clear, recognized by the Supreme Court in other recent cases, as presently to be noted.

1st. Where the alleged invention involves only such mechanical changes as come fairly within the skill of the mechanic, and produces *a result new only in degree*, but *not new in kind*, then (with some exceptions) there is an absence of patentable subject-matter: but,

2d. When the *result* is new *in kind*, as distinguished from new *in degree*, and *any* mechanical change is made outside of the enhancement of an *old degree* of utility, and is in the direction of a result or function new *in kind*, then (the result and means being new and useful), the presence of patentable subject-matter is a necessary and unavoidable conclusion of law.

The Supreme Court cases above cited all come within the first of the rules thus stated. The now pending case comes within the second.

An ordinary mechanic, following the line of thought developed or partially developed, in the *Epeneter and Grahl* patent, or, to use the words of the Court in *Smith vs. Nichols*,—if he has merely carried forward or made a new or more extended application of the original thought, would never reach the Gorham invention. He would not, in following such line of thought, which would be the improvement of the protector, *as a protector*,—he would not, I say, make it *shorter*, for, as *Epeneter and Grahl* show it, it is *none*

too long. As a protector, it would be no better for being made shorter. So as to width. A mechanic seeking to improve it, would not make it *narrower.* It was none too wide before. Hence, I submit with confidence, that the changes made by Gorham are *not* such changes as in the cases above cited, are held to be unpatentable.

On the other hand, Gorham's invention, now in question, involves an entire departure from the path which would be pursued by the ordinary mechanic, engaged in merely improving the Epeneter and Grahl protector. Gorham aimed at, and attained a result new *not* in degree, but in kind. So far as the record shows, no one previous to him had ever thought of stowing away a protector so as to put it out of the way in shipment or for other purposes. *That thing* was new with him both in conception and execution, and there was absolutely nothing in the prior state of the art adapted to suggest even remotely, that such a thing was desirable or attainable, not even to instruct him how to attain it. Hence, in what he did, he was not working in the direction of carrying forward a previously existing line of inventive thought, and thereby getting results better only in *degree*, as was the case with *McMillin* and the other patentees named in the above cited cases, but on the other hand, he left that line of mechanical inquiry, originated an absolutely new contrivance, embodying a result new *in kind*, and one never before contemplated by any mechanic.

Now the distinction which I have thus endeavored to make clear, is exactly the distinction which, as I understand it, is drawn by the U. S. S. Court in the case of *Hollister v. Benedict and Burnham Manufacturing Co.*, 113 U. S., 59, and also in the later case of *Thompson v. Boiselier*, 114 U. S., 1. In the first of these cases, the thing claimed was held not be patentable, because,—to use the exact language of the Court,—it

"Seems to us not to spring from that intuitive faculty of the mind put forth in the search for new results or new

methods, creating what had not before existed, or bringing to light what lay hidden from vision."

I think I have made it at least reasonably clear that Gorham, in making the invention now in question, *was* "in search for a new result," and that he "created what had not before existed," and I might add that he perfectly attained the result, and the mechanism embodying it.

The same distinction between the results of mere mechanical skill, working in the direction of securing greater perfectness in known appliances, and thereby getting results new only in degree, as contrasted with "that intuitive faculty of the mind put forth in the search for new results," (by which I understand, results new *in kind*), is also drawn in the other case last cited, *Thompson vs. Boiselier*, and this, being one of the latest reported decisions on that point, may be taken as a statement of the law as it now stands. The late leading cases in the Supreme Court which find in the patents under consideration, an absence of patentable invention, are, I believe, all or nearly all cited in this *Thompson vs. Boiselier* case (p. 12). Without taking time and space to abstract each of these cases, I may say of them generally that in each one, the only novelty of result was one of degree, not one of *kind*; and that thereby the case now pending is characteristically distinguishable from any of them, so that it does not come within the rulings so made. And so far as I can recall, there is no reported Supreme Court case, in which an invention embracing a result new *in kind*, has ever been held void for lack of patentable subject-matter. On the other hand, such patents, have, I believe, always been sustained, unless anticipated, or on account of other fatal defect.

But the Supreme Court has very recently upheld patents, in which the result was new only in degree.

In *Loom Co. vs. Higgins*, 105 U. S. 580, 590, 591, a claim was involved, which consisted of the combination of five elements. Each one was old, and in the combination in

which the patentee organized and claimed them, there seems to have been no new result, except that the loom then produced "fifty yards a day, when it never before had produced more than forty."

This was obviously only a difference in degree. And yet the patent was sustained.

A similar ruling was also made in *Consolidated Safety Valve Co.*, 113 U. S. 157. The prior Webster valve showed the features of the patent, but in what the Court found to be a practically and economically worthless form. The patent was sustained. And of this case, it may be said that though the prior Webster valve may have been economically worthless, it evidently had the elements of the patented invention so developed and embodied, that a good mechanic, skilled in that branch of the arts, following the line of mechanical thought embodied therein, would readily have reached the patented invention with a result only in degree.

But if, as may have been the view of the Court, the practical worthlessness of the prior Webster valve, took it entirely out of the storehouse of knowledge to which the skilled mechanic had a right to resort, then I contend that the same is true of Epeneter and Grahl and of Cole and of Barnes. Their devices were "practically and economically worthless," as may fairly be inferred from the testimony of Sargent, Record p. 34, Q. 188, and if so, they cease to have any significance whatever in the present case. They were never heard of in the trade, and the public derived no benefit from their existence.

In any view of this case, under the decisions cited, it is confidently submitted that as Gorham has attained a result new *in kind*, and has embodied that novel result by novelty of means,—slight as the latter may be,—his patent should be sustained.

Hence we respectfully submit that the charge of infringement has been clearly proven; that the defendant has wholly failed to sustain the allegations of his Answer as to

prior knowledge and use and want of patentability of the subject-matter in the patent sued on; that therefore complainants are entitled to a decree in accordance with the prayer of their Bill, and that the decree of the Court below should be reversed.

GEORGE H. CHRISTY,
J. SNOWDEN BELL,
For Complainants.

No. 399. October Term, 1887.

In the Supreme Court of the United States.

JAMES T. SARGENT and JOHN M. GORHAM, Administrators of the Estate of John H. Gorham, deceased, Appellants,

vs.

EDWIN K. BURGESS, Appellee.

Brief of Counsel for Appellee.

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vs.

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No. 399, October Term, 1887.

DEFENDANT'S BRIEF.

This is an appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania, wherein a decree of dismissal having been entered, the complainant takes an appeal to the Supreme Court of the United States.

The suit is brought by the appellants for an alleged infringement of U. S. Patent No. 223,338, granted to John M. Gorham, January 6th, 1880, for improvement in washboard, by the sale of a washboard made under U. S. Patent 255,555, granted to C. H. Williams, March 28th, 1882.

GENERAL STATEMENT OF THE CASE.

The invention involved in this controversy has reference to a certain improvement in washboards, the well-known

implement upon which a washer-woman rubs articles in the act of washing the same.

The improvement relates to a part designated by common consent a "protector," which is added to, connected with, or mounted upon any ordinary washboard, for the purpose of preventing the splashing of the suds against the clothes of the operator when using the board. The third claim of the patent sued on reads as follows:

"3. In combination with a washboard, a protector, located below the crown-piece and between the side-pieces of the washboard frame, and constructed to fold down into or upon said washboard even with or below the general plane of said washboard, frame, substantially as, and for the purpose shown."

Beginning at line 95, of the specification of the patent sued on a clause reads as follows:

"Another peculiar feature of my washboard is the flat manner in which it can be packed, as shown in Fig. 1 of the drawings. This is a great convenience and advantage in packing for shipment; and moreover, when thus packed, the protector is itself protected from injury, to which it would otherwise be exposed. This is accomplished by locating the protector, as shown in Figs. 1, 2 and 3 of the drawings, below the crown piece and between the side pieces of the frame."

In every washboard of ordinary construction there is a vacant space above the rubbing surface proper, below the crown or cap-piece and between the side-bars of the board. This space is called the soap-box.

The complainants insist that the gist or substance of Gorham's invention—the thing invented—consists in the utilization of the otherwise vacant space, the "soap-box," as a place of safety from injury for the protector, when not in use and for closeness of packing for transportation purposes. (Complainants' Brief below, page 6.)

Defendant denied that the said Gorham was the first and original inventor of the improvement claimed; and denied that the aforesaid letters-patent granted to the said Gorham, set forth and described any patentable invention, or any device, which, in view of the prior state of the art, is in law or in fact, legally patentable, and alleges that the washboard and protector, which defendant has sold is constructed differently, and embodies a different mode of operation from that employed in complainants' construction.

POINTS.

1. The utilization of the soap-box of an ordinary washboard as a space to put a protector, when not in use, does not involve that operation of the mind which is denominated invention, but is merely the exercise of ordinary judgment or selection, and that of a grade even below the expected mechanical skill. In fact to produce a patentable device, the exercise of invention must be *above* ordinary mechanical or engineering skill.

Morris vs. *McMillen*, 112 *U. S.*, 244, and cases cited.

See also *Jacobs* vs. *Baker*, 7th *Wall*, 295.
Simpson vs. *Woodman*, 10th *Wall*, 117.
Pearce vs. *Mulford*, 102 *U. S.*, 112.
Packing Co. Cases, 105 *U. S.*, 566.
Hollister vs. *Benedict Mfg. Co.*, 113 *U. S.*, 59.
Mfg. Co. vs. *Brass Co.*, 114 *U. S.*, 447.
Yale Lock Co. vs. Greenleaf, 117 *U. S.*, 554.

2. The terms of the claims relied on, in order to be for an operative device, necessitate the inclusion of the "Spring Coupler—C'," specified in lines 65 to 69 and 73 to 79, of the

descriptive portion of complainants' patent. Defendant does not use such a coupler, and therefore does not infringe the claim.

(*a.*) As a washboard when in use occupies an inclined position, it is apparent that any protector arranged in the soap-box so as to fold down for packing or for preservation from injury, when not in use, must necessarily be retained in an unfolded, open position when in use. The only means for thus retaining the protector in position for use, set up and described in the patent, is a spring or spring coupler "C′."

Complainants' expert testifies as follows (Record, page 31-2):

"×*Q.* 172. What would retain the protector in position at a right-angle to the board if the spring C′ were removed?

"*A.* Nothing would. The patent contemplates the use of some means to hold the protector at a right-angle to the board.

"×*Q.* 173. Do you find any description or illustration in the patent of any substitute or equivalent for the spring?

"*A.* No; the patent shows a spring—the best means."

It (the spring-coupler) is therefore an indispensible element in the combination.

Loom Co. vs. *Higgins*, 105 *U. S.*, 590.

(*b*) A combination is always an entirety and the patentee cannot abandon a part and claim the rest.

Schumacher vs. *Cornell*, 96 *U. S.*, 549.

(*c*) The omission of one ingredient of a combination claim averts any charge of infringement based on that claim.

Dunbar vs. *Meyers*, 94 *U. S.*, 187, and cases cited.

Gage vs. *Herring*, 107 *U. S.*, 640.

Fay vs. *Cordesman*, 109 *U. S.*, 408.

Defendant has omitted the spring and employs no equivalent (see 6th point), and therefore does not infringe the claim.

3. A proper construction of the claim relied on requires a consideration of the state of the art prior to the date of the patent, and this compels such a restrictive construction of the claim as to limit the invention to a resilient or a spring-coupled or yielding protector. Defendant's protector being absolutely rigid, infringement does not exist.

The state of the art is as follows:

Patent of Barnes, No. 8,161, June 17, 1851, (Defendant's "Exhibit E" and certified duplicate of the Barnes' model, Defendant's "Exhibit F.")

Taking "Exhibit F" (the Barnes' model) arranged as shown in Fig. 2, of the Barnes' patent drawing and inverting the model, we have the washboard proper in position for use in a tub. The "soap-box" portion pivoted to the board at "C d" extends above and beyond the rubbing surface, so as to perform the function of a protector. This protector, when not in use, is capable of being swung into a common plane with the washboard, thus adapting it to be packed flatly. This construction is similar to that of the defendant's, in that the protector is connected to the board by rigid arms, whereby it may be swung from one position to another, the protector, *per se*, not being pivoted.

Patent to Epeneter and Grahl, No. 127,325, May, 28, 1872, and certified duplicate model (Defendant's "Exhibits G and H" respectively.)

This patent shows and describes a protector located "below the crown piece and between the side pieces of the washboard frame." The model, "Exhibit H," shows said protector to be pivoted to fold down, in a limited extent, upon the washboard frame. All that is necessary to adapt this protector to fold *completely down* is to make it narrower.

The patentees made this, their protector, sufficiently narrow for such a distance above its pivots as to permit of a limited pivotal or folding movement. In the complainant's patent, the protector is made narrow for a greater distance to get a greater pivotal or folding movement, the difference of construction being merely one of degree and not a difference in kind. The foldable function of the protector in this exhibit is made the subject-matter of several claims in a re-issue (Defendant's "Exhibit Q") secured by one of the complaints in this case and not sued on.

Patent to J. A. Cole, No. 146,433, January 13, 1874, and certified duplicate of model, (Defendant's "Exhibit I and K.")

This patent shows a protector (a branding board and cap-piece) connected to the board by arms pivoted *between* the side pieces of the frame and capable of folding flat for packing purposes.

Patent to Anne Frike, No. 150,315, April 28, 1874, and certified duplicate of model of same, (Defendant's "Exhibits L and M.")

This patent shows a protector, "H," pivotally located between the side-pieces and below the (place of the) cap-piece. The part "F," which carries the protector and is provided with the pivots "A," may be considered as a protector of limited surface, or it may be considered as a part of the protector "H," as the adjacent surfaces of both assist in the function of preventing the suds from splashing the clothes of the operator. This protector, "H F," is located below the crown-piece and between the side-pieces of the washboard frame, and is constructed to fold down upon said washboard.

Patent to W. M. Stevens, No. 222,846, December 23d, 1879, (Defendant's "Exhibit N.")

This patent shows a protector consisting of an apron, mounted upon a frame of wire, said frame being adapted for

attachment to a wash-tub, and described in the patent "as a rest against which the operator may rest his or her body during the performance of the work." Said frame being made of wire, would necessarily yield more or less to pressure, and return to position when said pressure is removed.

The state of the art may be summarized as follows:

A resilient or yielding protector is old (Stevens). Washboards having their protector portions (the cap-piece and branding-board) pivotally attached to the board outside of and between the side-pieces, so as to be packed flat are old (Barnes and Cole, respectively). A protector pivoted between the side-pieces and below the cap-piece, and constructed to fold down upon the frame, is old (Frike); and, finally, a protector located in the soap-box, between the side-pieces and below the cap-piece and capable of folding to a limited extent down upon the framework, is old (Epeneter and Grahl.)

Gorham has simply pivoted Epeneter and Grahl's protector where Frike did, removed the portions of the protector projecting over the side-pieces, and has made the same resilient by a common well-known application of a spring. *No new result is accomplished.* The spring gives resiliency, which is old. The location, which utilizes the soap-box, is old, and the devices employed, each and all, are old. The combination claimed cannot, therefore, be patentable.

Pickering vs. *McCullough*, 104 *U. S.*, 319.

Hailes vs. *Van Wormer*, 20 *Wall*, 353. (87 *U. S.*, 353–375).

Hailes vs. *Albany Stone Co.*, 123 *U. S.*, 586.

Mosler Safe and Lock Co. vs. *Mosler Bahmann & Co.*, 127 *U. S.*, 354–363.

4. The history of the application on which the complainant's patent was based and granted, shows conclusively

that the resilient element of his combination was the only feature considered novel by the Commissioner of Patents, and that the patentee disclaimed the combination without that feature.

"In patents for combinations of mechanism, limitations and provisions imposed by the inventor, especially such as were introduced into an application after it had been persistently rejected, must be strictly construed against the inventor and be looked upon as in the nature of disclaimers."

Sargent vs. *Hall Safe Lock Co.*, 114 *U. S.*, 63.

The file-wrapper and contents (Defendant's "Exhibit O," page 97,) of the application for the patent sued on show that the patentee claimed originally, in substance, a protector adapted to swing upon the washboard.

Gorham's original applications 27 Nov., 1878, says: "My invention "consists *broadly* of a *swinging*, "*turning*, *movable* or yielding "protector." "C is a *movable* or "yielding plate or 'protector' "*pivoted journaled*, *hinged*, or in "*any manner movably attached* to "the frame." "It, the protector, C, "may be swung from either edge. "If made from wood or metal, "some *hinge* or *pivot* connection "between it and the frame is pre-"ferable." "My invention *broadly* "consists in a *bending* or yielding "protector. C may be an in-"dependent article of manufac-"ture and *detachably attached* to a "wash-board."

The 3d claim was for "a pro-"tector C adapted to *swing upon* "said wash-board." Gorham added a 4th claim, for a protector to be *moved*, *turned* or *folded*.

As Gorham's claims covered prior inventions, the Patent Office, 18 Dec., 1878, rejected them, and referred to the state of the art, to show that he must confine himself to his resilient function, and refused to rely upon Figs. 4 and 5 of his application as a sufficient modification of his claim, so as to reduce it to the function common to all the figures of his application. Defendant's expert X*Q*. 82. Record, page 75.

On the Epeneter and Grahl, defendant's "Exhibit B," and Frick's, defendants "Exhibit L." Record, page 100.

Gorham amended his application, 30 Dec., 1878, claiming: "A protector loosely secured, so "that when not in use it might be "*folded parallel* against the wash-"board; 2d, to *fold* against the "wash-board, so as to be *inclosed* "*within the limits* of the latter, . "without projection therefrom in "any direction; 3d, *pivoted* to the "upper portion of the casing about "the space, which latter is formed "between the rubbing plate and "the top of the board, said pro-"tector being adapted to *fold down-*"*wardly*, and be *inclosed within* "*said space;* 4th, a protector loosely "secured, . together with a spring "device, adapted to hold said pro-"tector in operative position; 5th, "a protector loosely secured . "together with a spring-device "adapted to *maintain* said *protector* "*in folded position* against the "board when the same is not in "use; 6th, a protector *pivoted* . "by a spring-device, which latter "is adapted to hold the protector "in operative position with an "elastic adjustment, and also to "*maintain* the *same folded parallel* "against the board when not in "use."

The Patent Office, 6 Jan., 1879, rejected every claim, except the 4th, which was for a spring to hold the protector up. No spring was shown to keep the protector flat. The pivoting and folding within the space were both old.

On the Epeneter & Grahl, defendant's "Exhibit G." Record page 102–3.

Gorham amended his application again, and claimed: 1. "A "protector adapted *by* its *elasticity* "or *resiliency*, or by *any* suitable "spring or *elastic* attachment to "yield to pressure." 2. "A pro-"tector *loosely* or *movably* secured. "so that when not in use, it may "be *folded bodily* against the wash-"board." 3. "A protector *loosely* "or *movably* secured, so that when

The Patent Office again, 14 January, 1879, rejected Gorham's application as amended, claim No. 1, because it included what was shown in neither the model nor the drawing. Nos. 2 and 3, because already patented by a prior inventor. "The said prior patent shows "a board pivoted between the sides "of the wash-board frame." Nos. 4 and 5, because *too broad*, in

"not in use it may be *folded against* "the wash-board, so as to be "inclosed within the limits of the "latter without projecting there-"from." 4. "A protector, C *or*, "*its equivalent*, any suitable spring "or elastic device for attaching "and connecting said board and "protector together. 5. "A pro-"tector C, *or its equivalent any* "suitable spring or elastic device "for imparting resiliency to said "protector."

claiming *an equivalent.* The words "or its equivalent, any," must be struck out, in order to sustain the application.

Epeneter and Grahl, defendant's "Exhibit G." Record, page 105.

Gorham then, 17th March, 1879, made a record submission to the decision of the Commissioner of Patents, and declared that he had "removed from the specification all objectionable features pointed out," and amended the claims "strictly in accordance with the requirements of the office; "in short, I have done all the Examiner seems to have "required, and have removed every objection raised to the "allowance of this application; and in view of which," he "respectfully asks that said application be allowed as at present amended" (Record, page 107).

The application thus amended, 17th March, 1879, to conform to the rulings of the Patent Office, described his invention to consist broadly of a "protector adapted by "any suitable spring or elastic "attachment or contrivance to "yield. C is the protector, and "it is pivoted, journaled, hinged, "or in any manner movably at-"tached to the frame A, or to any "suitable part of the wash-board "whatever. It is moreover pro-"vided or associated with any "suitable elastic, resilient or spring "contrivance, whereby the protec-"tor C is adapted to yield to pres-"sure. This proctector C may be

This re-statement was cancelled without an opinion from the Patent Office. Record, page 107.

"made of a single or from two or "more pieces. Moreover, it may "be swung from either of its edges. "I do not in any degree limit my- "self to any specific contrivance "whereby the protector C, when "moved by pressure against it, "shall spring back or return to its "normal position, as in this respect "my device may be indefinitely "varied without a departure from "my invention." He accordingly claimed: No. 1, "A wash-board "protector adapted by any suitable "spring or elastic contrivance to "yield to pressure and to return to "its normal position when said "pressure was removed;" No. 2, "A protector C, a suitable spring "or elastic device for attaching and "connecting the said board and "protector together;" No. 3, "A "protector C, a suitable spring or "elastic device for imparting resili- "ency to said protector."

A substitute was then, 16 April, 1879, presented. In the substituted application, Gorham repeats, with variations, his description of 17 March, 1879, and claims: No. 1, "An elastically "yielding wash-board protector, "substantially as shown;" No. 2, "A protector C, adapted to move "and yield to pressure, and also "adapted by suitable spring or "elastic construction or attach- "ment to return to position when "said pressure is relieved, sub- "stantially as shown," in which specification the following statement occurs:

"If the protector is made "from wood, metal, or other rigid,

The Examiner, 20 May, 1879, also rejected this application as amended, because both claims were too broad. "Claim 1 is broad "enough to cover a simple sheet of "spring-metal or rubber fabric, and "a patent for that could scarcely be "desired. Claim 2 is too broad to "be patentable, being substantially "for a result accomplished by any "suitable means."

"unyielding substance, some "hinged pivot or journal connec- "tion, between it and the frame A, "is necessary, and *when this con- "struction is adopted some suitable "spring or elastic connection must "be employed*, which shall operate "to retain the protector in the posi- "tion shown in Fig. 2, of the draw- "ings, but which shall permit the "protector to yield to pressure "against it." Record, page 108.

An amendment, 3 July, 1879, repeated the specification and claims. The 1st claim was for a protector to bend or yield to pressure and return to position. The 3d claim was like the present 3d claim.

Gorham, 25 July, 1879, refused to amend, and asked for a reconsideration of the case.

Gorham finally, 13 December, 1879, amended his 1st claim, as directed by the Examiner, and made it read as it now stands in his patent of 6 January, 1880.

The Examiner, 22 July, 1879, rejected the 1st and 3d claim: "As "to the first claim. In the first "place, it is too broad to be paten- "table, because it covers a result "rather than the means, and should "at least be modified by inserting "the words 'substantially as de- "scribed so as to' after the word "'constructed.'" "In the second "place, it is a claim amounting, "because of the term 'bend or "yield,' to two specific claims cov- "ering two different constructions, "and should be further modified "as indicated . by the erasure "of the words 'bend or.'" The 3d claim was rejected on the ground of previous patents, which anticipated the invention.

The Examiner, 8 Sept., 1879, reconsidered the case, and decided that: "The 1st and 3d claims are again and finally rejected upon the "references heretofore cited, and for the reasons previously given." The Examiner, 29 Oct., 1879, added a further reference.

The claims thus presented and abandoned being disclaimers, the objection to the references that the protectors shown were not elastic or resilient, and the voluntary statement that some spring or elastic attachment is necessary, all go to show that the present third claim must include by inference an element giving resiliency to the protector.

Gorham has been cut down to the single element which he has added to a washboard protector; that is, to a *spring* which holds the protector out for use.

He was made to renounce in his description everything but the spring attachment.

The ground-work of the appellant's argument is that he has discovered and invented a process or method for utilizing the soap box of a washboard. He singles out one constituent of his combination, and says it is new in this application, although old elsewhere. He then claims the function of a combined board. The novelty of the combination was and could be admitted only to the extent of the spring. Gorham, therefore, was confined to the spring, which connected the old board and old protector. No other attachment was claimed or could be allowed. If he is entitled to a spring coupler and to nothing else, how can he exclude any coupling which is not a spring? The difficulty of encasing a protector in the soap box against the full pressure of the spring, does not dispense with it. The obstacle is inherent in the combination, and the patentee must make the best of it. Even if the spring did contribute to make the protector lie down flat, instead of preventing it, the cooperation of the spring would not entitle the patentee to appropriate all other couplers. He is limited to his own invention. The third claim does not and could not discard the spring. He never had any other device nor did he pretend to have. The third claim repeats the spring, "constructed . substantially . as shown," and adds that the protector shuts up in the soap-box. But the advantage of the shutting up is an incident of the protector. The

patentee in order to monopolize this advantage shifts his ground and argues as if he had a protector without a spring. In this aspect he reads the third claim as if it was a new and independent combination for a protector and washboard, united by any means whatever. Here is the fallacy of the argument. The attempt is to reconstruct the patent. The combination patented is a washboard, a protector and a spring. The argument (Complainant's Brief, page 5) now is that the third claim is for a protector and washboard without a spring to join them together. Apart from the abandonment of one constituent of a combination, which dismembers all, and apart, from the fact that nothing is claimed to take the place of a spring, how could the spring be discarded and the protector retained? The patent was granted only on account of the spring. The patent stands and is valid only by reason of the spring. Without the spring the complainant has no washboard and protector. What would his protector amount to without a spring to keep the protector in position? The spring is the only means stated or claimed by which his combination is kept together. Instead of claiming every equivalent for a spring he is cut down to his spring. It is everything he can claim. If he gives it up there is nothing left. The spring is the life and soul of the complainant's patent, and if he abandons it he commits suicide. The moment he asks for more the answer is, you were granted the spring on condition that you should neither have nor claim anything else. The pretension to everything else is a forfeiture of the patent. It is a renunciation of the right by repudiating the condition upon which it was granted. The right and condition are one and the same. If the condition is not observed but thrown overboard, the right goes with it.

5. Not only does the record of the application show that the complainant's invention is restricted to a resilient protector, but the patent itself, when properly construed,

restricts the invention specified in the claim sued upon to a resilient or elastically pivoted protector.

A claim cannot be enlarged by the language in other parts of the specification.

R. R. Co. vs. *Mellon*, 104 *U. S.*, 112.
Mfg. Co. vs. *Brass Co.* (*ante*).
Yale Lock Mfg. Co. vs. *Greenleaf* (*ante*).

Nor can the specification be modified or abandoned, in whole or in part, on the trial of the case involving the question of infringement.

Le Roy vs. *Tatham*, 14 *How.*, 156.

The portions of complainant's specifications relied on to show that the invention claimed is restricted to a resilient protector are as follows:

The statement of invention is: "My invention relates to wash-boards, and particularly to the combination with a wash-board of a protector constructed to bend or yield to pressure, and return to position when said pressure is removed." The acknowledgment of the prior state of the art as being, first, rigidly attached protectors; and, second, pivotally attached protectors, but possessing "no elastic resilient quality or function."

The design of the invention is stated in lines 35 to 48, to be, to overcome the lack of resiliency in protectors as heretofore constructed, and the invention is said to broadly comprehend any wash-board protector "constructed to bend or yield to pressure."

Even when the protector is pivoted to the frame, the spring C′, is to be used "to push or pull the protector into the position illustrated in Figs. 2 and 3." Lines 75 to 79 inclusive.

The first sentence of the description beginning at line 95, which clause is improperly referred to by complainants as warranting a broad construction of the third claim, should

in order to harmonize with the rest of the specification read as follows:

"Another peculiar feature of my wash-board is the flat manner in which it can be packed, as shown in Fig. 1, of the drawing, notwithstanding the presence and employment of the spring-coupler or spring C′."

The last sentence of said clause might also properly be amended by inserting after "protector" the words "and spring C′," so as to read as follows:

"This is accomplished by locating the protector and springs C′, as shown in Figs. 1, 2 and 3 of the drawings, below the crown-piece, and between the side-pieces of the frame."

He makes no claim to a *wash-board*, but admits that article to be old, and does not even attempt to re-fashion it for his protector. 1. He says: "A is the *wash-board frame*, which may be of *any* size, *description* or material. B is the rubbing "surface, which may also be of *any* character." (Gorham's Patent, lines 69–72). 2. Protectors are also admitted to be old. The two old types which Gorham specifically renounces are: First: *rigid* protectors, attached rigidly to the wash-board frame. Second: protectors attached to the wash-board frame by *joints* or *pivots*, and having a *swinging movement.* (Gorham's Patent, lines 19–30. Record, page 47 *Ans.* to *Q.* 8).

Apart from the official submission by Gorham to the restrictions put upon the extent of his claims by the Patent Office, before a patent would be granted to him, the history of its clauses, as they were cut to pieces and remodelled by the Commissioner of Patents, shows what they mean. In the first and third claims, the protector is confined to the solitary function of resiliency, by referring "constructed" (page 2, lines 6 and 19 Gorham Patent, 6th January, 1880), to the description, which had been pared down to that single quality. The pivoting to the frames (page 1, lines 76–7),

could not form part of the claim, as pivots were renounced (lines 27–30) as old. No pivot is shown in the patent. Complainants' expert says; "The two dotted lines . do not "and could not represent pivots, but do as a matter of fact "represent the spring C′ and the rod which passes through "them, as clearly shown in Fig. 2. There is not a word in "the specification that refers to this rod as forming a pivot." (Record, page 17, *Ans.* to *Q.* 106). Appellant's Brief, page 21: "That the dotted indications of the spring in Fig. 1 "are intended to represent pivots, is wholly destitute of "foundation and so palpably absurd that we deem it "unworthy of discussion."

The patent contemplated nothing but a spring. ×*Q* 173: "Do you find any description or illustration in the "patent of any substitute or equivalent for the spring?"

"*A.* No; the patent shows a spring, the best means." (Record, page 32. *Ans.* to *Q.* 108). The spring may act as a coupler.

Nor does "my wash-board" (page 1, line 95) mean anything but a spring protector, for wash-boards of all kinds are renounced. (Page 1, lines 69–72). The language of the patent refers to nothing but a spring, and Gorham enlarges upon its function. "A protector constructed to bend or "yield to pressure, and to return to its position when said "pressure is removed." (Lines 14–16). The "bend or" "having been struck out of claim and withdrawn by Gorham, stands as a synonym for "yield." "A protector thus "constructed and attached (with rigid attachments) is not "capable of yielding or moving from its position when the "body of the operator presses against it." (Lines 24–6). "It (a protector attached by joint or pivot, though with a "swinging movement) possesses no elastic or resilient qual-"ity or function, and when moved by pressure, has no "power to return again to normal position when said pres-"sure is removed. My invention is designed to overcome "the objections and defects presented in these old types of

"protectors; and . said invention broadly comprehends "any wash-board protector constructed to bend or yield to "pressure, and to return to position when said pressure is "removed." (Lines 30–40). The Figs. illustrate the different aspects of the spring movement, and no other device. (Lines 45–7). The protector in Fig. 2 is spoken of as "freed "or *sprung out* into operative position." (Line 55). The material itself composing the protector is spoken of as "yielding and returning to position" (line 63), and is called a spring coupler. (Line 67. Defendant's expert answer to $\times Q.$ 90. Record, page 77–8.)

The third claim is nothing but the spring protector shut up and nailed down. The attempt to stow the protector away in spite of the spring is set up as a back-handed appropriation of the patents which Gorham could not appropriate by a direct claim of invention. The invention being a spring attachment, and no other, Gorham cannot claim a combination without a protector which is worked by a spring.

He was forced to renounce the claim for an equivalent of his spring protector in his withdrawal and submission made to the Patent Office, 14 Jan. 1879. The claim for an equivalent never reappeared, and is not in the present patent, 6 Jan., 1880.

The spring adds nothing to the protector in packing it for shipment, but prevents it from lying down. There is no provision in the patent for keeping the protector down against the pressure of the spring to push it up. Complainant's expert, when asked: if there is any device for retaining the protector in its position upon the cross-bar, says: "Of course not." Complainant himself testifies in *Ans.* to $\times Q.$ 209: Was there no complaint against the protector not lying flat for packing purposes or for shipment? Not when they were packed properly *and fastened by a nail in the side of the leg over the protector.* Record, page 38. In the amendment of 30 Dec., 1879, claim 5 was for "a protector . with a "spring-device adapted to maintain said protector in a folded

"position against the board when the same is not in use."
"Claim 6, for "a protector pivoted . by a spring-device,
"which latter is adapted to hold the protector in operative
"position with an elastic adjustment, and also to maintain
"the same folded parallel against the board when not in
"use."

The decision of the Patent Office Examiner, rendered 6th January, 1879, was: "There is no foundation for the 5th "and 6th claims, in either specification, model or drawing, "and said claims are therefore rejected." (Record, page 103.)

6. Defendant's protector differs in construction and mode of operation.

Defendant's protector is *not* resilient, *per se*, and it is rigidly connected with the board, when in position for use. It, *per se*, is not pivoted or foldable. It occupies, substantially, the same position with relation to the branding-board when in position for use, and when not in use as a protector. It has no pivots, but is rigidly secured to arms, which are pivoted within the side-pieces as in the Cole patent (Defendant's "Exhibit I"). It is not elastically pivoted as specified in lines 59 to 60, of the patent sued on. Defendant's pins "d" are not essential to the maintainance of the protector in an operative position, as they and the slots may be discarded, thereby allowing the arms to rest at their ends upon the inner surface of the branding-board (Defendant's Expert *Q.* 25 and 27, Record, pages 51 and 52). The protector is not located below the cap-piece nor between the side-pieces of the frame. When located between the frame, it must be removed therefrom to perform its function as the protector. When placed within the frame for packing purposes, the protector projects above the frame.

In mode of operation three distinct motions are required to place the protector into and out of operative position. It must be drawn upwardly and outwardly to detach it from the cap-piece and moved inwardly and dropped to place it in the soap-box.

Taking the third claim of complainant's patent and comparing the defendant's protector therewith, the latter, WHEN "located below the crown-piece, and between the side-pieces of the washboard frame," is NOT constructed *to fold down into or upon said washboard*" at all. Including one or the other forms of springs or spring-coupler, shown in complainant's patent, as defendant insists that the same should be included, the defendant's projector is not provided with any spring or spring-coupler, or with any known equivalent therefore. Neither rib "*e*" and groove "*b*," nor the pins "*d*" and slots "*s*," of defendant's construction, are equivalents for the spring or spring-coupler of complainants' construction, because neither permits of a yielding or pivotal movement of the protector when in use. Failing to do this, that is doing less than complainant's construction, they are not equivalents.

Walker on Patents, Section 352.

Gorham elastically pivots his protector, so that it may yield and return to position. Defendant supports his protector rigidly, as does the school-boy his desk-lid, and to take the illustration suggested by the Court upon the hearing of the case, the protector drops like a lid into or upon the frame. The lid being an antique, there is no invention in applying it to a new use. The obviousness of swinging a board upon a hinge is such that no one could claim it even for an object lesson in a kindergarten.

It would seem that the salvation of the third claim of complainant's patent from invalidity, by reason of inoperativeness and lack of invention, necessitates the inclusion of a spring as an element. This element is not employed by defendant, who therefore does not infringe the claim.

7. The result accomplished by Gorham's invention, if new, is only in degree and not in kind.

The result accomplished by Gorham's invention, so far as regards the packing function of his protector (waiving

for the moment its resilient function), is a protector pivoted within the side-pieces and below the cap-piece, with substantially all portions of said protector in the soap-box and below the upper edges of said side-pieces.

Epeneter and Grahl ("Defendant's Exhibit, G.") show a protector pivoted between the side-pieces and below the cap-piece, so that a part of the protector (that part extending from the pivots to a point in a line extending from the top of one side-piece to the other) is folded in the soap-box. That part is protected from injury to which it would be exposed if it were located above said side-pieces. Epeneter and Grahl fold *part* of their protector into the soap-box. Gorham folds *all* of his protector into the soap-box. The result accomplished in the one case is, part of the protector is protected by the soap-box, and in the other case *all* of the protector is protected by the soap-box. The difference in result is one of degree, and not one in kind. The instrumentalities employed are substantially identical, viz.: a soap-box and a pivoted protector of the proper width to fall into the soap-box.

As stated in *Smith* vs. *Nichols*, 88 *U. S.*, 112, "All the particulars claimed by the claimant, if conceded to be his, are within the category of degree."

Making Epeneter & Grahl's protector narrower at all points above the side pieces; or, in other words, extending the narrower dimensions, for a greater or less distance above the side pieces, so that more or less of the protector may fall in the soap-box, does not seem to be anything more than a display "of the expected skill of the calling, which involves only the exercise of the ordinary faculties of reasoning upon materials supplied by the special knowledge and the facility of manipulation which results from its habitual and intelligent practice, and is in no sense the creative work of that inventive faculty which it is the purpose of the Constitution and patent laws to encourage," as stated in *Hollister* vs. *Benedict Manufacturing Co.*, 113 *U. S.*, 59.

Complainants insist (complainant's brief, page), that no one previous to Gorham had ever thought of stowing away a protector for shipping or other purposes. This is denied, in view of the fact that the Cole patent, No. 146,433 (Defendent's Exhibit "I") provided for *and specified* the advantage of flat packing for transportation (page 93, Record), and as part of Epeneter & Grahl's protecter was protected by the soap-box from injury *in transitu* it would seem that to thus protect *all* of a protector was not only merely a matter of degree but also "would spontaneously occur to any skilled mechanic in the ordinary process of manufacture," as stated in *Thompson* vs. *Boisseleir*, 114 *U. S.*, 1.

8. The cases relied on as cases sustained, "in which the result was new only in degree," are *Consolidated Safety, Valve Co.* vs. *Crosby, etc. Valve Co.* 113 *U. S.*, 157–179 *and Loom Co.* vs. *Higgins*, 105 *U. S.*, 380–599.

In the former, Mr. Justice BLATCHFORD, delivering the opinion of the Court, after mentioning the Webster and other patents cited, illustrating the prior state of the art, says:

"In view of all these patents and the state of the art, it appears that Richardson was the first person who described and introduced into use, a safety valve, which, while it automatically relieved the pressure of steam in the boiler, did not in effecting that result reduce the pressure to such an extent as to make the use of the relieving apparatus practically impossible, because of the expenditure of time and fuel necessary to bring up the steam again to the proper working standard * * * . In regard to all of the above patents, adduced against Richardson's patent of 1866, it may be generally said that they never were in their day, and before the date of that patent and Richardson's invention, known or recognized as producing *any such* result as his apparatus of that patent produces as above defined * * * . The

prior structures never affected *the kind* of result attained by Richardson's apparatus, because they lacked the thing which gave success. They did not have the retarding stricture which gave the lifting opportunity to the huddled steam, combined with the quick falling of the valve."

This case certainly cannot be relied on as one wherein a patent producing a result new only in degree was upheld. The Court specifically states that the prior structures never affected the *kind* of result.

In *Loom Co.* vs. *Higgins* (the other case relied on) the patent was not sustained, merely because the product of the loom was increased, but because as stated by Mr. Justice BRADLEY, delivering the opinion of the Court:

"The combination of elements by which this (result) was affected, even if those elements were separately known before, *was invention sufficient to form the basis of a patent.*"

It is true that in the decision it is stated that "it certainly was a *new and useful* result to make a loom produce fifty yards a day, when it never before had produced more than forty;" but it is not stated that, by reason of this increase of production, the patent is sustained. In fact, Webster's claim, sued on, involves a new mechanical element, viz., the latch, which was substituted for the "pusher" of a previous construction, and the combination was so improved by the presence of this new element that the loom could be driven at its utmost speed.

Furthermore, it was argued:

"That supposing the devices to be sufficiently described, they do not show any invention; and that the combination set forth in the fifth claim is a mere aggregation of old devices already well known, and therefore it is not patentable. This argument would be sound *if* the combination claimed by Webster *was an obvious one* for attaining the

advantages proposed—one which would occur to any mechanic skilled in the art. * * * At this point we are constrained to say that we cannot yield our assent to the argument that the combination of the different parts or elements for attaining the object in view *was so obvious* as to merit no title of invention."

It is clear, from the above, that the combination claimed by Webster, involving, as it did, a latch instead of a pusher, was a new combination or a new co-operative (not obvious) arrangement of old devices which produced *a* useful result, and was therefore held patentable.

In the case, at bar, not only is the result in part shown in the prior art, (as illustrated by Epeneter and Grahl, Defendant's Exhibit "C," Frike, Defendant's Exhibit "L," and Cole, Defendant's Exhibit "I"), *but the identical instrumentalities, the mechanical* elements employed by the complainant's, are all present in Defendant's Exhibit "G and H" (Epeneter and Grahl's Patent and Model), and the change required in the latter to produce the complete result is certainly obvious to an ordinary mechanic seeking that result.

A SPECIAL REPLY TO APPELLANT'S BRIEF,

(received after preceding argument had been completed).

The complainant argues in his brief:

I. That defendant infringes his method.

The differences between his board and the defendant's, he explains thus:

(*a.*) The contrast of a *rigid* protector to a *yielding* protector is unimportant, because the third claim does not call for a yielding protector. The *folding* is the only element of invention embodied in the third claim. (Complainant's Brief, pages 4–5).

This point presents the language of the complainant's patent for construction, and invites the Court to interpret

its meaning. The history of the terms and the invariable construction put upon them have been fully recounted. The phrase "*constructed . substantially . as shown*" has been proved to be the only basis for the allowance and for the validity of the third claim. The only device "*shown*" to connect the protector and wash-board together was the spring. That was the only pretence to novelty suggested by the complainant, and he disclaimed all other means of coupling the protector and wash-board, in order to save his claim in view of the state of the art. As he is not a pioneer, he is limited to his specific construction. The description, if it varied from the claim, could not enlarge its scope. *Railway* vs. *Mellon*, *supra*. But the description is all one way and stakes everything on the spring. (Defendant's expert $\times Q.$ 90, Record pages 77–78). The drawings disclose nothing but a spring.

As resiliency is the gist, soul and foundation of Gorham's patent, and of all the modifications illustrated in it, and, as his expert admits, that if the springs were removed *nothing* remains to retain the protector in operative position, and that no *substitute or equivalent* of a spring is suggested in his patent, there can be no infringement by the defendant.

Williams uses neither a spring nor anything that is a well-known substitute for a spring: this being either a weight, a counter-balance or a piston and cylinder constituting an air cushion. In the whole range of mechanical constructions, it is utterly impossible to find and produce an instance where a rigid, slotted arm projecting from a part performs the functions, or is the equivalent of a spring. Any device which can be substituted for a spring, that does not retain resiliency in all parts, is *not an equivalent* of a spring.

Complainant's expert says: "I understand (by Gorham's "words, 'My invention,' l.34) that he is there referring to "that feature of his invention which relates to the yielding "capacity of the protector, and its capacity of returning to "the extended position automatically. This is the feature

" of Gorham's invention which the defendant's board does " not embody." × *Q.* 129 Record, page 25.

" The Gorham patent describes, and the *principal feature of novelty*, there referred to is a protector arranged with a spring." (Complainant's expert, *Q.* 14. Record, page 13).

(*b*) The infringements alleged result from encasing the protector in the soap box. The mechanism is claimed whatever it is, because it brings about the result of dove-tailing the protector and wash-board together.

The assumption of the complainant is that he is a pioneer inventor of a combined wash-board and protector, and on that ground is entitled to exclude every device which couples them. This pretension has been contradicted and rejected at every stage in the attempt to enforce the claim. The complainant has himself renounced, disclaimed and abandoned the pretension. It is too late now to revive and reclaim a surrendered right, even if it originally existed.

II. The complainant indulges an elaborate account of the protector's falling into the soap box and expatiates on the security which this position affords, especially in shipment. Complainant's Brief, pages 7–12.

The short answer to all this is that it has nothing to do with the case. The third claim is restricted, not less than the first and second, to a spring attachment or coupler. The third claim does not admit of enlargement. The advantages which the complainant dwells upon serve no purpose except to recall the exclusion by the Patent Office of every means specified by the complainant to work his combination except a spring. The acquiescence and formal submission to the decree of the commission make a disclaimer which is final. If anything else could confirm the disclaimer, it is the fact that the claim for other mechanism to operate the protector has been stricken out and disappears from the patent.

The complainant reviews the prior patents and tries to explain away the anticipations of his combination. (Brief 12–18.)

It is a work of supererogation to discuss the state of the art, for if it were conceded that the complainant had produced the first protector, which folded flat upon the wash-board or encased itself in the soap box, he would be no better off. He is limited by his claim, he is limited by his disclaimer, and he is limited by the decree and grant of his patent to a spring coupling for his protector and wash-board.

In courtesy, however, to complainant, who labors this part of his case, and in justification of the Commissioner of Patents in his course of decision upon the complainant's application, the state of the art may thus be summarily stated.

III. The course of decision pursued by the Commissioner of Patents is justified by the state of the art at the time Gorham made his application, 27th November, 1879.

The Barnes patent and model, Defendant's Exhibits "E" and "F" have been examined above. The defendant's expert states folding operation. (× *Q.* 30, Record, pages 53–54).

The Defendant's Exhibits "G" and "H" show "*In "combination with a wash-board a protector located below the "crown piece and between the side pieces of the wash-board "frame.*" If this language of Gorham's third claim has any profound or hidden meaning, as seems to be implied from the mathematical exactitude with which it is repeated, then Epeneter & Grahl divined the mystic import of the words on 27th March, 1872, when they 'located' their protector in that wonderful juxtaposition to the head and legs of an old wash-board. The protector thus situated, constructed and *pivoted* could, as the complainant's expert had to admit on cross-examination, "*fold flat*, or to adhere to the charmed "language of Gorham's third claim, "*down into or upon "said wash-board, even with or below the general plane of said "wash-board frame.*" × *Qs.* 159, 160, 161, 162, 163, Record,

page 30. The remark of the complainant's expert, that then the protector "would not stand up," shows, apart from the originality of the remark, that, in his innocence he has taken Gorham's view, which seems to be, that if he attaches his spring to any protector, the title of the owner is divested, and Gorham becomes, by virtue of the attachment, owner of the protector. The folding, though the fact, it seems, is always overlooked, is an incident of the protector, and not of the spring. The defendant's expert explains the folding function embodied in defendant's Exhibits "G" and "H." ×*Qs.* 96–99, Record, page 80–81. Gorham re-issued the patent No. 9,022 on the same date with his original patent, to wit, 6th January, 1880—defendant's Exhibit "Q." This re-issue of the Epeneter & Grahl invention brings it down to date, and thereby includes all the protectors which were patented between 28th May, 1872, and 6th January, 1880, as available additions or modifications of the original Epeneter & Grahl design.

The fact that Gorham bought up the Epeneter & Grahl patent and reissued it, is an admission that his patent could not stand while the Epeneter & Grahl was outstanding.

Defendant's Exhibits "L" and "M" also show a protector which folds flat, or in Gorham's idiom, "down into or upon said wash-board." (Page 2, lines 3–4.) The protector is made of two pieces, but Gorham's application admits that protectors may be so constructed. In his amendment, 17 March, 1879, he defines: "This protector C may be made of a single or from *two* or more *pieces*. (File Wrapper and Contents, Gorham Application, Record, page 108.)

Unless made of two pieces joined at an angle, the protector could not fold both *into and upon* the board. The Frike patent accomplishes this feat, and it is the *only* patent that does. It is also located between the legs of the wash-board, and although below the head-piece, yet, because the head-piece forms part of the protector, it is argued that it cannot be recognized as *below* the head-piece. It certainly is not *above* the head, which is the top, and as the tennants

which support it go into the legs, it must be below the head. The tennant, on which the protector turns, is the exact pivot adopted by Gorham for his present board, and put in the exact location. Let defendant apply this to his Exhibits "G" and "H" as he is entitled to do by the reissue, "Q," and by merely trimming the edges, Gorham's protector would be reproduced without the spring. The bristles, it will be recollected, are optional. The Frike protectors pack flat for shipment in pairs, and are available on that account in the market, like the complainant's and the defendant's protectors. (*Q.* 99, Record, page 81–2.) If it was desired to make the Frike a single protector, it would be no invention to cut off one end of the protector on a line with the leg of the wash-board, and then it would fold flat. (Complainant's expert × *Q.* 169, Record, page 31. Explanation, × *Qs.* 41–2–3, Record, page 56–7. × *Q.* 98–101, Record, page 81–2.)

The defendant's Exhibits "E" and "F" show a protector which folds flat, or, in the language of Gorham, "*even with or below the general plane of the wash-board frame*," and so do defendant's Exhibits "I" and "K." (*Qs.* 36–9, Record, page 55.)

The result, therefore, is that Gorham, not being the first inventor to provide a wash-board with a protector capable of being placed in a flat condition for packing, must be limited to his exact mechanism as claimed, or to well-known equivalents, for any of the elements which he employs, and which are not found in similar wash-boards; that is to say, others are precluded by the claims of Gorham's patent from using a yielding protector, because he was the first to provide such a protector.

Gorham, in view of the state of the art, is limited to his specific construction. Defendant's Exhibit *Q.* 44, Record, pages 57–58.

IV. The complainant's reminiscence of his Patent Office experience is decidedly fragmentary. He recalls only an application, 1st, for a protector adapted to *fold out* of position; 2d, to fold *parallel against* the wash-board. These claims having been rejected on the state of the art, complainant claimed a protector adapted to fold down on the board level at least with the same, and obtained it. (Brief 18–19).

It may refresh the complainant's memory to sum up the proceedings before the Commissioner of Patents: 27 November, 1878, a broad claim for any swinging, turning movable, bending or yielding protector, pivoted, journaled, hinged, or in any manner movable or detachable attached to the frame. The third claim was for a protector adapted to swing upon the wash-board. The 4th to be moved, turned or folded. 16th December, 1878, by preliminary amendment the complainant added a claim for a protector adapted to be moved, turned and folded when not in use. "My invention" is the complainant's description, "by its *folding or elastic character*." Record, pages 97–100. Folding throughout the specification is synonymous with moving, swinging, turning, bending or yielding.

18th December, 1878, Patent Office rejected complainant's claims because they had been covered by prior inventions. The figures could not modify the claims, and reduce them to the resilient function which was the sole invention and must be common to all the claims. Record, pages 97–100. Defendant's Expert, Record, page 59, ×Q. 82, Record, page 74–5.

30th December, 1878, complainant amended his application claiming: 1. A protector loosely secured, so that it might be folded parallel against the board when not in use. 2. To fold against the wash-board and be inclosed within its limits. 3. Pivoted to the casing and adapted to fold downward and be inclosed within said space. 4. Loosely secured with a spring device to hold the protector in operative position with an elastic adjustment to and from the

board. 5. The combination with a wash-board of a *protector* loosely *secured thereto* together *with a spring device* adapted *to maintain it in folded position against the board when not in use.* 6. *Pivoted by a spring device* which is adapted to hold the protector in operative position and also *to maintain the same folded parallel against the board when not in use.*

6th January, 1879, the Patent Office struck out all but the 4th, and rejected "*elastic* adjustment, *because no such attachment was disclosed.* Record, page 101-3.

8th January, 1879, the complainant submitted to the Patent Office ruling and renounced the claim which had been rejected on account of prior inventions. He admitted the anticipations but distinguished them from his invention, and objected to the references (Epeneter & Grahl) & Frike, defendant's Exhibits, "G" and "L" respectively, because "*neither of these devices possess the features of elasticity or resiliency.*" Record, page 103.

Gorham amended his application again, and claimed: 1. "A protector adapted *by* its *elasticity* or *resiliency*, or by "*any* suitable spring or *elastic* attachment to yield to pres- "sure." 2. "A protector *loosely* or *movably* secured (to "wash-board) so *constructed* that when not in use it may be "*folded bodily* against the wash-board." 3. "A protector "*loosely* or *movably* secured . so *constructed* that when not "in use it may be *folded against* the wash-board, so as to be "enclosed within the limits of the latter without projecting "therefrom." 4. "*A protector C, or its equivalant, any suitable* "*spring or elastic device for attaching and connecting said board* "*and protector together.* 5. "*A protector C, or its equivalent,* "*any suitable spring or elastic device for imparting resiliency to* "*said protector.*"

The Patent Office again, 14 January, 1879, rejected Gorham's application as amended, claim No. 1, because it included what was shown in *neither the model nor the drawing.* Nos. 2 and 3, because already patented by a prior inventor. "The said prior patent shows a board pivoted between the

"sides of the wash-board frame." Nos. 4 and 5, because *too broad* in claiming *an equivalent*. The words "or its equiva- "lent any," must be struck out, in order to sustain the application. Record, page 103-6.

17th March, 1879. He then presented a new specification and new claims which made resiliency the sole basis of the whole.

The application thus amended, 17th March, 1879, to conform to the rulings of the Patent Office, described his invention to consist broadly of a "protector adapted *by any* "*suitable spring or elastic attachment or contrivance to yield.*" "C is the protector, and it is pivoted, journalled, hinged, or "in any manner movably attached to the frame A or to any "suitable part of the wash-board whatever. *It is moreover*, "*provided or associated with any suitable elastic, resilient or* "*spring contrivnce*, whereby the protector C is adapted to "yield to pressure." "This protector C may be made of a "single or from two or more pieces. Moreover, it may be "swung from either of its edges. I do not in any degree "limit myself to *any specific contrivance whereby* the *protector* "C, when moved by pressure against it, *shall spring back* or "return to its normal position, as *in this respect* my device "may be indefinitly varied without a departure from my "board invention." He accordingly claimed: No. 1, "A wash- "board *protector* adapted *by any suitable spring or elastic contri-* "*vance to yield* to pressure and to return to its normal position "when said pressure was removed;" No. 2, "A *protector C*, "*a suitable spring or elastic device for attaching and connecting* "*the said board and protector together;*" No. 3, "A *protector* "*C, a suitable spring or elastic device for imparting resiliency to* "*said protector.*"

The re-statement claimed any equivalent for the spring attachment and was cancelled without an opinion from the Patent Office.

16th April, 1879, a substitute was presented and a new specification and claims submitted. In the substituted

application, Gorham repeats, with variations, his description of 17th March, 1878, and claims: No. 1, "An *elastically yield-* "*ing wash-board protector, substantially as shown*;" No. 2, "A "protector C, adapted to move and yield to pressure, and "also adapted by suitable spring or elastic construction or "attachment to return to position when said pressure is "relieved, substantially as shown."

"The Examiner, 20th May, 1879, also rejected this application as amended, because both claims were too "broad. Claim 1 is broad enough to cover a simple sheet "of spring-metal or rubber fabric, and a patent for that "could scarcely be desired. Claim 2 is too broad to be "patentable, being substantially for a result accomplished by any 'suitable' means." If the word '*suitable*' be erased from the claim, and the words "*substantially as described*" inserted after attachment, the claim may be allowed.

The history of the complainant's experience in the Patent Office shows that the 3d claim was found exactly like the other claim upon the spring attachment. The spring connection is stated in express terms not only as the fundamental characteristic of the combination, but as the special means to enable the protector to fold down into the soap-box, and is even claimed as the means to keep the protector folded down! The repeated statements of the claim settle the meaning of its terms, although there could be no doubt about them under any circumstances. The words "*constructed . substantially . as shown*," thus identified with the origin and progress of the idea, limit and confine the complainant to the device which he has "*shown*." He is not entitled to even a resilient equivalent.

The genesis and development of the terms of the third claim can be traced back through its changes of language to the original idea. The language of the description itself, when collated and brought into juxtaposition, betrays what the complainant meant (× *Q.* 90, Record, pages 77–8).

V. The complainant while admitting that the figures 1 and 2 without alteration do not show an operative board, attribute the defect to the draughtsman, and insist that the claim is nevertheless valid.

The drawings, description and claims must not be interpreted to enlarge the scope of the patent. (Ans. to *Q.* 78–9, Record, page 72–3.)

But were it admitted that the patent described what the model, "Defendant's Exhibit A," shows, the patent is still for an operative device. The model does not fold flat, and can not work without guidance or assistance in either direction, to wit, either to get into an operative position or to be folded down when not in use.

This is admitted by complainant's expert. To the enquiry, "Do you find described or shown in the model, "Defendant's Exhibit C," a protector which is capable of "returning, unaided, at all times from its packing position "to is protecting position?" he replied: "If the protector "was of the character shown by "Defendant's Exhibit C," "then, like the protector of defendant's wash-board, *it would* "*have to be guided into place.*" (Ans. to × *Q.* 137, Record, page 26.) Defendant's expert explains how the operation of the device is a matter of chance. (Ans. to × *Q.* 62, Record, page 65.) Practical experience with the Gorham board in the market confirms the judgment formed from an examination of the model. To the question, "What was your experience in "the sales of the board in that, the original, form, (that is, "with screw blanks instead of rod, and minor edge of pro-"tector beveled off, and spring re-adjusted), in which it "was put upon the market?" "Farnsworth replied: The "board, as first put upon the market with the protector, "was unsatisfactory, for the reason that the springs were not "properly confined to produce the desired result, that is, "bring the protector back to its standing position after it "had been bent down. And we had a great deal of trouble "with them being sent back to the factory and discounts "allowed on that account." (Ans. to *Q.* 186, Record, page

85.) *Q.* "In handling the board, did you have to make the "discounts and allowances to which you refer?" *A.* "They "were made by me, or upon my report to the factory. "Sometimes I would take them off and allow the parties "their discounts without being returned to the factory; "take off the protectors." (*Q.* 187, Record, page 86.) "Was the board withdrawn or abandoned on account of this "dissatisfaction?" *A.* "No, I could not say that it was "*entirely*; there was a great deal of talk about it. The talk "related to the springs being unsatisfactory." (*Q.* 188, Record, page 86.) The complainant, Sargent, admits that complaints prevailed against the Gorham board, on account of the spring, on account of the spring-holder, and of the protector not lying flat, unless nailed down, and that the boards were being returned to the manufacturer. (Record, page 38.)

The protector *proved* inoperative. The board constructed in accordance with the patent, 6th January, 1880, *did not work*. It became a *necessity* to elect either to alter or to abandon the construction described, illustrated and claimed. Then Gorham set his inventor to work, and he made the present board. The Defendant's "Exhibit B" is not described in the drawings, in the description, nor in the claims of Gorham's Patent, 6th January, 1880. It belongs to the type of protectors which Gorham disclaimed in express terms, because they were old and already dedicated to the public. (Lines 27–30). To the question: "What mechanical construction do you understand by the "attachment of a protector to a wash-board frame 'by a "joint or pivot which allows a swinging movement' of the "protector?" the complainant's expert replied: "I under-"stand that that sentence would refer more particularly to a "structure like Defendant's 'Exhibit B.'" ×*Q.* 136, Record, page 26. And end of *Ans.* to *Q.* 46. Record, page 60. Although restricted by the Patent Office to the springy and yielding function, Gorham appropriates an old protector,

and, by attaching his spring, asserts the exclusive rights, that are incident to the protector, and not to the spring.

This summary method of acquiring the exclusive right that belongs to the public, must be sanctioned somehow. Gorham, therefore, takes out a new patent, No. 285,254, on 18th September, 1883, for the exact protector which he has *substituted* for the protector described, illustrated and claimed in his patent 6th January, 1880, with the single addition that it may be attached to either side of the board. To the question: "Does the arrangement of the present board cor-" respond with the protector in Gorham's double wash-board, "Defendant's 'Exhibit P,' except that the spring and tennant "are inserted in a removable part instead of in the leg itself "of the wash-board?" Sargent, the complainant, replied: "It is the same protector, but it is only attached to that "piece and made to reverse from one side to the other by "being taken out and placed in position on the opposite "side." (×*Q*. 213. Record, page 38).

This patent, 18th September, 1883, is, in effect a reissue, procured in order to enlarge the scope of the patent of 6th January, 1880, and make it secure all movable protectors, by attaching it to a double wash-board that style, Defendant's "Exhibits L and M," having in the interval superseded the single wash-board in the market.

VI. The complainant says that the stowing away of his protector in the soap box, reveals his genius as the creator of a brand new idea.

This revelation, however, is not involved in the case. The third claim is for a specific construction, to wit: A protector and wash-board combined by a spring attachment. All other methods of combining the wash-board and protector were renounced and disclaimed. The third claim was accepted with its restricted scope, and cannot now be expanded. The stress which the complainant lays upon the "*folding*" of his protector betrays the fixed idea in his mind. Why would he emphasize the specific construction which carries

his protector into the soap box, if he meant *all* the methods of utilizing the soap box? *Expressio unius est exclusio alterius.*

But on the hypothesis that this Court would reverse its course of decision and listen to an argument which seeks to enlarge a claim beyond its terms, what is the basis of the complainant's pretension? First. The protector folds down upon the board. Second. The board receives the protector when folded.

But in the folding function Barnes, Cole and Frike are the complainant's leaders. They all fold, and they fold flat. As to Barnes' complainant's expert, $\times Q.$ 158, Record, pages 29, 30, as to Cole, $\times Q.$ 165, Record, pages 30, 31. The Barnes protector folds down and receives the board, while the complainant's merely reverses the process, and his protector folds down and is received by the board. This is a mere reversal of the parts, and does not involve invention. It is of no consequence in reference to packing for shipment, whether the protector is outside or inside of the board. Defendant's expert, *Q.* 30, Record, page 53, 54. The Cole board has the folding function and packs flat for shipment. The patent describes and claims both of these advantages. Record, page 93, Defendant's expert, *Q.* 38, 39, Record, page 55, The Frike board shows a protector located exactly as specified in the complainant's third claim, and constructed to fold down into and upon the board. It contains every element of the complainant's combination set forth in the third claim. Defendant's expert, *Q.* 43, Record, page 57. Complainant's expert admits that the double protector could be reduced to a single protector which would operate as such, or would then be located where he says the complainant's protector is located, "below the upper edge of the cap-piece." Complainant's expert, $\times Q.$ 169, 170, 171, Record, page, 31. Defendant's expert, Record, page 56-7.

The Epeneter and Grahl board did in fact protect its protector to the extent of its folding into the soap-box. Record, page 75.

The argument of the complainants in his brief is that:

Gorham's protector differs from the protectors shown by the defendant's exhibits, in *kind*, and not simply in *degree*.

The counsel for complainant says: "So far as the record shows no one previous to him had ever thought of stowing away a protector, so as to put it out of the way in shipment or for other purposes. *That thing* was new with him, both in conception and execution, and there was absolutely nothing in the prior state of the art, adapted to suggest even remotely that such a thing was desirable or attainable, nor even to instruct him how to obtain it." Brief, page 24.

This proposition cannot be sustained. The third claim, which presents the point for decision, calls for *any one* of *four* methods for folding:

1. Down *into* the wash-board frame.

2. Down *upon* the wash-board frame, that is *up* and *on* the frame.

3. Down *even with* the general plane of the wash-board frame.

4. Down *below* the general plane of the wash-board frame. (Defendant's expert, $\times Q$. No. 103, Record, page 83.)

A protector which folded in any one of the four ways claimed, would anticipate Gorham's protector. *Ib.* Record, 83.

The Epeneter & Grahl protector is found in the very space, or soap-box, which Gorham claims to be the first to have utilized for a protector. The only change which would be required to make the Epeneter & Grahl protector fold inside the frame-work, would be a change of *location*. The pivots would be shifted to the upper corners of the soap-box,

and then the protector would drop down, and lie flat against the board inside the wash-board frame.

The change would be *less* than was required to convert Gorham's protector, even according to his model, defendant's "Exhibit C," into an *operative* protector. He had to discard the rod running across the board, and substitute pivots, or tennants, and change the location so that the protector could swing on them. He recognized the fact that these changes disclosed a different construction from that claimed by his patent of 6th January, 1880, and therefore he took out a new patent, which claims his specific construction after the changes were thus made. Defendant's "Exhibit P," Record page 122.

The change, which would make the Epeneter & Grahl protector fold into the soap-box, is also shown in the Defendant's exhibits. The Frike protector is located in the *exact position* suggested, long before Gorham thought of it. Defendant's "Exhibit M," Record, page 94. As the Epeneter & Grahl patent was re-issued by Gorham, 6th January, 1880, defendant's "Exhibit Q," the application of Frike's location to Epeneter & Grahl's protector would be available to modify it. Thus *no* change would be required to make the Epeneter & Grahl protector fold flat upon the wash-board, except to trim the *side* edges which project *above* the legs of the wash-board. The bristles being optional, might be superseded by a plain rubbing surface, and the end of the protector would lie on that surface.

But the Frike protector, apart from its use to supplement the Epeneter & Grahl protector, shows an independent construction, which anticipates Gorham's. The operation of the lid which folds down into *and* upon the wash-board frame, has been explained.

The folding *even with* or *below* the *plane* of the wash-board *frame*, is illustrated in the Defendant's "Exhibits F and K."

In each of the four ways of folding a protector, claimed by Gorham in the alternative, he is anticipated.

To demonstrate a want of novelty, it would have been sufficient to have anticipated *any one* of the methods, as by the disjunctive '*or*,' Gorham claims for himself, and excludes others from *all* the four ways of folding a protector.

But neither changing the location *nor* reducing the dimensions of the protector converts it into a *different* thing. It remains the *same* in *kind* after all the changes.

To take the illustration suggested by the Court upon the hearing of this case, it drops like a lid into or upon the frame. The lid being an antique, there is no invention in applying it to a new use. The obviousness of swinging a board on a hinge is such, that no one could claim it even for an object-lesson in a kindergarten. It has been applied to everything, even to a berth, as in the English Channel steamers, where the shelf folds down, and is stowed away flat against the side of the boat during the day-time, and is held up by props at night for a mattress. The prop is as obvious as the lid.

Great stress is laid upon Gorham's conceiving the idea of utilizing the soap-box for stowing away his protector. But even if it were the fact, it would not help him, for Epeneter & Grahl anticipated him, by putting their protector in the soap-box before he did. They are entitled to a protector folding in that space, if their's can be adapted to fold, whether they conceived the idea of its folding or not. The protector is secured to them for every use of which it is capable.

All that is necessary, by the admission of the complainant's expert, is to cut off the projecting ends of Epeneter & Grahl's protector, in order to *increase* its folding functions to such a degree as to permit it to fold flat. Complainant's *A.* to *Qs.* 160, 161, 162, 163, Record. This is the best proof that no invention was required of the complainant to produce the subject-matter of his third claim. The difference is only one of *dimension*. Such a change is merely

one of *degree*, and not one of constructive or mechanical principle.

A prior refrigerator was shown which, if changes were made in the form and proportion of its compartments, could produce circulation by a descending current of air, as well as an ascending current, for which it provided, "It being certain that Lyman (the prior inventor) contrived a "machine "which would produce the desired circulation, and could be "used for refrigeration in the ascending current, it remains "only to consider, whether if any one desired to make use "of the descending current for the same purpose, he could "claim such use as a new invention. It is no new invention "to use an old machine *for a new purpose.* The inventor of "a machine is entitled to *all the uses* to which it can be put, "*no matter whether he conceived the idea of the use or not.*" The change of dimension being within the range of skill possessed by a mechanical expert, was available for Lyman, the orignal inventor. (*Roberts* vs. *Ryer*, 91 *U. S.*, 150.) This is settled law, said the Supreme Court (*Pa. R. R.* vs. *Locomotive Truck Co.*, 110 *U. S.*, 490), citing a dozen authorities for the position, although "*The new form result has not before* "*been contemplated.*"

The mere change of location is not patentable. A flange on the iron frame of woven wire mattresses, to support the strain upon the end pieces, was not patentable, although placed lower than the top ot the end pieces and out of the way of the spring attachments, because any competent expert could have located the flange shown in a prior patent in that position. (*Nat. Wire Mattress Co.* vs. *N. Y. Braided Wire Mattress Co.*, 20 *Fed., Rep's*, 119.)

A different arrangement of reeds and a change of valve dimensions in an organ were not patentable. (*Estey* vs. *Burdett*, 109 *U. S.*, 633.)

A straw-feeding attachment (old) was combined with a return-flue boiler (old), having previously been combined with a fire-box boiler. The utility of the new combination

was much greater, but there was no invention in the union. "There was no inventive resource drawn upon to bring them "together. Could not the owners of the patents for the "straw-feeding attachment and the return-flue boiler work "them together in defiance of the combination? To ask "the question is to answer it. Yet the case supposed does "not differ from the case as it exists; for the public owned "the right to the Cornish (return-flue) boiler, and was en- "titled to every use to which a patentee owning it might "lawfully apply it."

In the patent for moulding crucibles, Nimmo claimed the combination of a mould to support the clay ball, with the mechanism to work a revolving "former," which shaped the inside to correspond with the exterior, and was capable of removal even when the vessel had a "bilge." Two prior patents, offered to show anticipations, it was objected that the "formers" which they described were inoperative. The Court said they could be altered without the exertion of the inventive faculty, by mechanical skill, and that the imperfections did not affect them as anticipations. (*Pickering* vs. *McCullough*, 104 *U. S.*, 310.)

The following are cases in which there was held to be an absence of sufficiency of invention:

Pearce *vs.* Mulford	102 U. S. 112
Densmore *vs.* Scofield	102 U. S. 375
Crouch *vs.* Roemer	103 U. S. 797
Packing Company Cases	105 U. S. 566
Hall *vs.* Macneale	107 U. S. 90
Atlantic Works *vs.* Brady	107 U. S. 192
Slawson *vs.* Grand Street Railway Co . . .	107 U. S. 649
King *vs.* Gallum	109 U. S. 99
Double-Pointed Tack Co. *vs.* Two Rivers & Co	109 U. S. 117
Bussy *vs.* Excelsior Manufacturing Co . .	110 U. S. 131
Penna. R. R. Co. *vs.* Locomotive Engine & Co	110 U. S. 490
Phillips *vs.* Detroit	111 U. S. 604

Morris *vs.* McMillin . . . . . 112 U. S. 244
Stephenson *vs.* Brooklyn & Co . . . . . 31 Off. Gaz. 263
Blake *vs.* San Francisco . . . . . 113 U. S. 679
Miller *vs.* Force . . . . . 116 U. S. 22
Preston *vs.* Manard . . . . . 116 U. S. 661
Gardner *vs.* Herz . . . . . 118 U. S. 180
Pomace Holder Co. *vs.* Ferguson . . . . . 119 U. S. 335
Dreyfus *vs.* Searle . . . . . 124 U. S. 60
Munson *vs.* Mayor & Co . . . . . 124 U. S. 601
Weir *vs.* Morden . . . . . 125 U. S. 98
Forncrook *vs.* Root . . . . . 127 U. S. 176
Hendy *vs.* Golden, etc. Works . . . . . 127 U. S. 370
Holland *vs.* Shipley . . . . . 127 U. S. 396

Defendant respectfully urges and insists that the third claim of the Gorham Patent necessarily involves an element which elastically pivots the protector to the board, and that in view of the prior art, Gorham is restricted to his specific devices, and cannot invoke the doctrine of equivalents, and, finally, that defendant does not infringe said patent nor any of the claims thereof.

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